

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

C.A. NO. 5:96CV91

THE STATE OF TEXAS

VS

THE AMERICAN TOBACCO COMPANY; R.J. REYNOLDS
TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO
CORPORATION; B.A.T. INDUSTRIES, P.L.C.; PHILIP
MORRIS, INC.; LIGGETT GROUP, INC.; LORILLARD
TOBACCO COMPANY, INC.; UNITED STATES TOBACCO
COMPANY; HILL & KNOWLTON, INC.; THE COUNCIL
FOR TOBACCO RESEARCH - USA, INC. (Successor to
Tobacco Institute Research Committee); and THE
TOBACCO INSTITUTE, INC.

VIDEOTAPED

ORAL DEPOSITION

OF

DON E. COSBY

September 24, 1997

This transcript has been prepared for you by

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ANSWERS AND DEPOSITION OF DON E.

COSBY, produced as a witness at the instance of the Plaintiff, taken in the above-styled and -numbered cause on the 24th day of September, 1997, before Ronald R. Cope, a Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter and Certified Realtime Reporter, at the offices of Jones, Day, Reavis & Pogue, located at 2001 Ross Avenue, Suite 2300, in the City of Dallas, County of Dallas and State of Texas, in accordance with the Federal Rules of Civil Procedure and the agreements hereinafter set forth.

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P R O C E E D I N G S

THE VIDEOGRAPHER: We're on
the record.

DON E. COSBY,

the witness hereinbefore named, being of
lawful age and being first duly cautioned and
sworn in the above cause, testified on his
oath as follows:

EXAMINATION

BY MR. SCHWARTZ:

Q. Tell me what your name is, please.

A. My name is Don Cosby.

Q. And Mr. Cosby, how old are you?

A. I am 42.

Q. Getting ready to have a birthday
or just had one or what?

A. Just about to have a birthday.

Q. Okay.

A. Friday.

Q. What is it that you do for a
living?

A. I am the chief financial officer
for a bank and a bank holding company in
Lubbock, Texas.

Q. Have you ever been involved in any

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16 1 lawsuits before?
2 A. Yes.
3 Q. As a plaintiff or a defendant?
4 A. No, sir.
10:16 5 Q. As a witness?
6 A. I was a -- yes. I was an expert
7 witness, and then in another lawsuit was just
8 a witness that was involved, I guess, if you
9 will.
10:17 10 Q. All right.
11 A. A witness relating to a car
12 accident.
13 Q. Have you had your deposition taken
14 before?
10:17 15 A. Yes. In regards to the car
16 accident, I was deposed.
17 Q. So you've given one deposition --
18 A. Yes, sir.
19 Q. -- right?
10:17 20 My name is Bob Schwartz. We met
21 for the first time just a few moments ago, did
22 we not?
23 A. Yes. That's correct.
24 Q. Do you understand that I
17 25 represent, along with other lawyers in other

10:17 1 firms, the State of Texas in the case that the
2 State has brought against the tobacco
3 industry?

4 A. That's my understanding of your
10:17 5 role.

6 Q. I'm on the other side of this
7 lawsuit than the side that you're testifying
8 for.

9 A. Yes.

10:17 10 Q. You understand that?

11 A. Yes, sir.

12 Q. You also understand that in this
13 deposition you've taken an oath to tell the
14 truth, right?

10:17 15 A. Yes, sir.

16 Q. You have counsel with you?

17 A. Yes.

18 Q. And we're here to find out about
19 your expert testimony.

10:17 20 A. Yes.

21 Q. Okay. In the deposition process,
22 it is going to require that you give your best
23 answer to the question that's asked.

24 A. I will.

10:18 25 Q. And that means if you don't

18 1 understand the question, you've got to let
2 somebody know, and it would be nice to let me
3 know.

4 A. Okay.

10:18 5 Q. I will be happy to rephrase it,
6 repeat it, break it down, do whatever I need
7 to do to help you understand it before you
8 answer it.

9 A. Okay.

10:18 10 Q. I will not be offended if you ask
11 me or tell me "I don't understand that
12 question. I need you to break it down."

13 A. Okay.

14 Q. Okay?

10:18 15 A. Yes.

16 Q. You've been doing very well at
17 giving verbal responses to each question that
18 I ask. I'm sure you've been told already to
19 do that, but we need to do that, for obvious
10:18 20 reasons. The court reporter is taking this
21 testimony down and nods of the head and shakes
22 and different hand signals or facial --

23 MS. SAVARESE: Charley
24 horses.

25 Q. (By Mr. Schwartz) -- signs --

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10:18 1 Charley horses mean one thing. They do mean
2 something -- don't play real well in written
3 form. They look real good on the videotape.

4 Don't try to stand up while the
10:19 5 videotape is on, things like that. Okay?

6 A. Okay.

7 Q. Also, if for any reason you need
8 to take a break or confer with counsel, just
9 let me know.

10:19 10 A. Okay.

11 Q. We will probably go to
12 5:00 o'clock or so today and -- so it's not
13 like you've got to be concerned about a
14 marathon or -- and I'm not going to be
10:19 15 pressing. There will be times where I'm going
16 to ask you to explain what your opinions are
17 or statements that you make, and it's not to
18 in any way badger you, but it's so I can fully
19 understand what it is you're saying or what
10:19 20 position you're taking. --

21 A. Okay.

22 Q. -- and why. All right?

23 A. Yes.

24 Q. Let's see. Where are you from
10:19 25 originally?

19

1 A. I was born in Tulia, Texas.

2 Q. Where is that?

3 A. It's about halfway between Lubbock
4 and Amarillo on Interstate 27.

10:19

5 Q. How long did you stay there?

6 A. Till I graduated from high school.

7 Q. Where did you go after that?

8 A. I attended Texas Tech University.

9 Q. What were you studying at Tech?

10:20

10 A. Business administration with a

11 major in accounting.

12 Q. And you got a degree in

13 accounting?

14 A. BBA. Bachelor of Business

10:20

15 Administration. That's correct.

16 Q. All right. And I understand

17 you're a CPA?

18 A. Yes, sir. I passed the exam

19 in '77 and became certified in 1979, after the

10:20

20 two-year experience requirement was satisfied

21 Q. Did you have any additional

22 schooling after you graduated from Tech?

23 A. Not beyond continuing education

24 courses -- development courses, those type of

20

25 things. But no degree-related work.

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10:20 1 Q. The continuing education is on the
2 accounting side?

3 A. Yes, sir.

4 Q. Did you work in the business
10:21 5 administration field between the time that you
6 were certified as an accountant?

7 A. I was working for an accounting
8 firm, Peat, Marwick.

9 Q. Why don't you tell us what
10:21 10 business administration is, in your own words.

11 A. I think business administration is
12 the process of managing a company,
13 organization, if you will, normally with a
14 profit motive.

10:21 15 Q. There are certain guidelines that
16 one is to follow in doing that, or principles?

17 A. Yes, I would think so.

18 Q. Well, let's put it this way:
19 Would you say it's more of a subjective art or
10:21 20 an objective art?

21 A. Subjective.

22 Q. So it can be done in many
23 different ways and really could receive the
24 same result?

10:22 25 A. Yes, sir. Many different styles.

22 1 of management, if you will.

2 Q. And one person with a BBA in
3 business administration might be critical of
4 the way a -- another BBA might have done
10:22 5 something, but yet he's achieved the same
6 result and you're at the same spot where both
7 of you wanted to be at the end, then what's
8 the difference?

9 A. That's -- yeah, I guess. Yes.

10:22 10 Q. And is it fair to say that
11 business administration deals primarily with
12 finances, or does it deal more with people
13 management?

14 A. I really haven't analyzed that as
10:22 15 to what the percentage breakdown is of those
16 two things.

17 Q. Well, let's talk about where it is
18 that -- have you ever had a job that was
19 solely in Peat, Marwick, a business
10:23 20 administration job?

21 A. I don't know whether I understand
22 that question.

23 Q. All right. Tell me -- tell me
24 what --

23 25 A. I was a staff accountant when I

10:23 1 was with Peat, Marwick, and a couple of other
2 positions as I progressed.

3 Q. Let's talk about that job for a
4 minute. What level did you go into that job
10:23 5 as or on?

6 A. At Peat, Marwick when I started,
7 as I indicated, I believe the position was
8 staff accountant. Later on I was a -- what
9 they called a senior staff accountant, and
10:23 10 then had just been promoted to what they
11 called then supervisor position prior to
12 leaving. I worked for Peat, Marwick for about
13 four years total.

14 Q. What were your job
10:24 15 responsibilities as a staff accountant?

16 A. On the audit staff and
17 participated in audits, in issuing opinions
18 about financial statements, and then later on
19 worked in the tax department in tax research
10:24 20 and tax compliance, filling out tax returns.

21 Q. And how did that change when you
22 became a senior staff accountant?

23 A. I tended to supervise other people
24 or oversee other people that were doing the
10:24 25 detail work in that regard.

24 1 Q. More of a manager?

2 A. Yes.

3 Q. And how did your position as

4 supervisor differ from being a senior staff

10:24 5 accountant?

6 A. Once again, I guess a little more

7 supervisory, maybe, in that regard. The

8 senior is normally, at least on the audit

9 staff, is on site in the field at the

10:25 10 companies where the audits are actually being

11 prepared. The supervisors are normally back

12 at Peat, Marwick's offices, if you will, and

13 tend to be managing multiple audits or jobs

14 that are going on versus more or less focusing

10:25 15 on one particular company.

16 Q. What did you do after you left

17 Peat, Marwick?

18 A. Okay. I went to work for a bank

19 holding company group in 1981.

10:25 20 Q. How did you get involved with that

21 group?

22 A. They contacted me about possibly

23 coming to work for them as chief financial

24 officer.

25 25 Q. Do you know how they got your

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10:25 1 name?

2 A. Yes. One of the individuals that
3 was working within the banking group was the
4 president at one of the banks that we had done
10:26 5 some work for when I was with Peat, Marwick.
6 A client, in other words.

7 Q. So were you recruited away from
8 Peat, Marwick?

9 A. Yes, sir.

10:26 10 Q. And how long did you stay with
11 that particular group? It was Ford Bank
12 Group?

13 A. It was the Ford Bank Group, yes,
14 sir. Approximately eight years, from 1981 to
10:26 15 1989.

16 Q. I see on your resume that you --
17 in every job experience category, you state
18 that you are responsible for, responsible for,
19 responsible for. And for example, at Peat,
10:26 20 Marwick, you said that you were responsible
21 for banking, savings and loan, agricultural
22 and retail clients. What do you mean
23 "responsible for"?

24 A. I guess had direct assignments of
10:27 25 clients in those industries.

27 1 Q. So if you --

2 A. Or worked on those jobs or those
3 industries, audits, or tax returns.

4 Q. If you're using the word
10:27 5 responsible for, you're talking about a direct
6 assignment from somewhere or someone?

7 A. That's right.

8 Q. And when you go and list your Ford
9 Bank Group, Inc. experience, you say
10:27 10 responsible for acquisition analysis and
11 coordination, regulatory applications and
12 compliance, SEC registration, tax planning and
13 compliance, debt structuring, and medical
14 benefits program coordination, right?

10:27 15 A. Yes, sir.

16 Q. What do you mean you were
17 responsible for that? Who is it that made
18 that direct assignment to you?

19 A. I guess it would have been our
10:27 20 president or chairman directed me that those
21 were the areas that I was responsible for as
22 chief financial officer; and therefore, needed
23 to make sure that we stayed in compliance or
24 worked with those that may have included, you
28 25 know, hiring outside companies, accounting

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10:28 1 firms, or other types of entities to assist us
2 in that. But that I was responsible for
3 getting that done on behalf of the company.

4 Q. Who was your chairman that you
10:28 5 reported to?

6 A. Gerry Ford... Gerald J. Ford.

7 Q. That was in Lubbock, Texas?

8 A. Yes, sir.. But he always lived in
9 Dallas, and still does.

10:28 10 Q. What is he doing today? Do you
11 know, as far as his occupation? Not on the
12 golf course or --

13 A. Yeah. Today, I'm not certain what
14 he's doing today, but his occupation is -- I
10:28 15 believe he is chairman of California Federal
16 Savings Bank.

17 Q. Why did you leave the Ford Bank
18 Group?

19 A. During that time period, we were
10:29 20 doing an extensive amount of mergers and
21 acquisitions activity, and there was an
22 extensive amount of travel involved. And I
23 had small children at that time and decided
24 that that was not going to be best for me or
10:29 25 my family long-term, and so I left there and

29

1 went to work for Texas Tech University.

2

Q. How old are your children today?

3

A. Today they're 17 and 14.

4

Q. Boys? Girls?

10:29

5

A. My girl is 17, and my son is 14.

6

Q. I see also on your resume that you are an officer and board member of the Ronald McDonald House.

9

A. Yes, sir.

10:29

10

Q. How long have you been an officer or a board member with that organization?

12

A. About six years.

13

Q. Have you ever held any other titles or positions with Ronald McDonald House?

10:30

15

16

17

18

19

A. Treasurer. I'm not currently holding that title, but I have in the past. That would be the officer position. And then director, member of the board.

10:30

20

Q. What office do you hold today?

21

22

A. I do not currently hold an office with Ronald McDonald.

23

24

Q. All right. So this resume that we received for your deposition is outdated in at least the sense that you're not an officer at

30

25

10:30 1 Ronald McDonald House?

2 A. That's correct.

3 Q. But you still are a board member?

4 A. That's correct.

10:30 5 Q. What about the United Way of
6 Lubbock? Are you still an officer and board
7 member there?

8 A. Yes, sir., I am vice chairman of
9 the board and also a board member.

10:30 10 Q. How long have you been with the
11 United Way in Lubbock?

12 A. About five years.

13 Q. How did you get involved with
14 Ronald McDonald House?

10:30 15 A. A friend of mine that was on the
16 board recruited me to come and work with them,
17 thought that my accounting/financial
18 background would be helpful to their
19 organization.

10:31 20 Q. In what way? Did you learn in
21 what way they were anticipating you might be
22 able to help them?

23 A. Just -- it's a fairly small
24 organization. They only have about three
10:31 25 employees. And as it relates to just general

31 1 accounting, investments, those types of
2 things.

3 Q. Well, did you perform accounting
4 services for the Ronald McDonald House?

10:31 5 A. Accounting activities, I guess,
6 yes. I was involved in overseeing the
7 financials, the annual report, involved and
8 worked with that. Monthly would assist the
9 executive director in preparing some of the
10:31 10 financial information. We did have an outside
11 accounting firm that actually did the monthly
12 general ledgers, but was involved in that
13 process.

14 Q. Would it be fair to say that you
10:32 15 weren't drawn to the Ronald McDonald House
16 because of what it did for children and
17 families, but what you might be able to do for
18 the organization itself?

19 A. I don't think in lieu of, I guess,
10:32 20 if that's what you said. I think both of
21 those things, that I was drawn both for the
22 purpose that they do and for the fact that I
23 thought I could help or make some difference.
24 If an organization is a good organization, but
31 25 I can't help it, I can't see how my

10:32 1 involvement is going to be beneficial if
2 there's not a way that I can assist them.

3 Q. What about the United Way of
4 Lubbock? Were you providing any accounting
10:32 5 services for them?

6 A. Yes. I guess -- let me stop and
7 think. For 1995 and 1996, I was treasurer and
8 therefore, because of that position, chairman
9 of the finance committee for the United Way of
10:33 10 Lubbock and very involved in their financial
11 accounting activities.

12 Q. Were you involved as a volunteer
13 as well?

14 A. Yes, sir. Yes, sir.

10:33 15 Q. Have you ever supported any
16 organizations such as the American Heart
17 Association, the American Lung Association,
18 American Cancer Society, et cetera?

19 A. General contributions, I have.
10:33 20 have not actively been involved in any of
21 those organizations.

22 Q. How often do you contribute to one
23 of those health organizations, if we can have
24 the agreement to refer to them that way?

10:33 25 A. I don't know. I'd have to look

33 1 back.

2 Q. Do you do it regularly?

3 A. Sporadically.

4 Q. Is that on a yearly basis or not
10:34 5 even a yearly basis?

6 A. It would probably not even be
7 yearly.

8 Q. You donate to the United Way
9 yearly?

10:34 10 A. Yes, sir.

11 Q. And you probably donate regularly,
12 and I'm talking financially, I know you give
13 your time, but you donate regularly to the
14 Ronald McDonald House?

10:34 15 A. Yes, sir.

16 Q. Are you paid for being a board
17 member of either of those charitable
18 organizations?

19 A. No, sir.

10:34 20 Q. So you give your time and also you
21 give money?

22 A. Yes, sir.

23 Q. When is it that you took on the
24 task of testifying for the tobacco industry in
34 25 this lawsuit?

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10:34 1 A. I believe I was contacted in April
2 or early May of 1997.

3 Q. And who is it that contacted you?

4 A. Mike Weiss.

10:34 5 Q. Who is that?

6 A. He is an attorney and a CPA that
7 lives in Lubbock. At that time, I believe he
8 lived in Austin.

9 Q. What connection did Mr. Weiss have
10:35 10 to the tobacco industry or this lawsuit?

11 A. At the time when he contacted me,
12 I did not know what his affiliation was. He
13 inquired about my background as it relates to
14 the State of Texas and Texas Tech University's
10:35 15 health plans and my involvement in that. And
16 based on my responses, he indicated that he
17 thought that the law firms would like to
18 engage me as an expert witness.

19 Q. But who was he coming to speak to
10:35 20 you on behalf of?

21 A. I guess one of these law firms. I
22 do not know. He said someone would be
23 contacting me later on.

24 Q. So you've known Mr. Weiss for some
25 time?

36 1 A. Yes, sir.

2 Q. And you've known that he's been an

3 attorney for some time?

4 A. Yes, sir.

10:36 5 Q. And you knew that he practiced law

6 in Austin?

7 A. Yes, sir.

8 Q. At the time that he came to see

9 you; is that right?

10:36 10 A. Yes, sir. Uh-huh.

11 Q. And he came and talked to you

12 about being involved in the tobacco

13 litigation?

14 A. Yes, sir.

10:36 15 Q. And testifying on the tobacco side

16 of the litigation?

17 A. Yes, sir.

18 Q. And he made that clear, didn't he?

19 A. I don't know whether he really

10:36 20 made it clear initially or not. I mean, he

21 was just inquiring in general about whether I

22 had the time or had any interest in

23 testifying. And I'm sure sometime during the

24 conversation we discussed that it would be on

36 25 behalf of the tobacco companies, but the

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10:36 1 initial conversation was more related to my
2 background and involvement on health-related
3 matters -- plans, primarily.

10:37 4 Q. Did you feel that it was more in a
5 subliminal way that he asked you or inquired
6 as to whether you would have a problem working
7 for the tobacco industry in this case as
8 opposed to a direct way?

10:37 9 A. I don't know -- I'm not sure that
10 he asked me at all, either directly or
11 indirectly.

12 Q. He just gave you certain
13 information which led you to believe that this
14 was going to be on the tobacco side of the
10:37 15 lawsuit?

16 A. Right. That's right.

17 Q. That was important to you, wasn't
18 it?

19 A. Not specifically. I mean, it
10:37 20 sounded like something that I did know
21 something about and possibly could provide
22 some information relating to. So it wasn't
23 really important that it -- whether it was the
24 tobacco side.

10:37 25 Q. Do you smoke?

38 1 A. No, sir.

2 Q. Does anyone in your family smoke?

3 A. No.

4 Q. Has anyone in your family

10:38 5 experienced a lung or heart disease that is

6 attributable to smoking?

7 A. Not that I'm aware of.

8 Q. Or even cancer of some form?

9 A. Yes. My mother had a form of

10:38 10 leukemia, and that's what she died from.

11 Q. Did you bring up the subject of

12 testifying for the tobacco industry with

13 either the Ronald McDonald House or the United

14 Way before you took this assignment?

10:38 15 A. No, sir.

16 Q. Do you know if Ronald McDonald

17 House or the United Way takes money from the

18 tobacco industry?

19 A. I do not know.

10:38 20 Q. You never thought to inquire about

21 that?

22 A. No, sir.

23 Q. You never thought to ask them

24 if -- anyone there if they felt that it would

38 25 be a conflict of interest for you to stump for

10:39 1 the tobacco industry, so to speak, and also
2 sit on the board of a charitable organization
3 like Ronald McDonald House or United Way?

4 A. No. I never thought of asking
10:39 5 them that.

6 Q. Well, let's think about that for a
7 minute.

8 A. Okay.

9 Q. Explore with me, if you will, the
10:39 10 ways in which you think there could be a
11 potential conflict of interest in you working
12 for the tobacco industry in this case and
13 working for these charitable organizations in
14 the community.

10:39 15 A. Nothing really comes to mind.
16 Conflicts of interest are not my specialty,
17 but --

18 Q. Not something you generally think
19 about?

10:39 20 A. Not -- not in this regard. Not in
21 this context. I do -- I guess, am fairly
22 careful as it relates to the banking
23 organizations and any conflicts potentially
24 from a lending or depository relationship
10:41 25 among those I do serve on the board of our

10:40

1 bank and holding company?

2 Q. Let's talk about the banking
3 industry. You're going to have clients of the
4 bank who are competitors in business, right?

10:40

5 A. Uh-huh.

6 Q. And you get very confidential and
7 secretive information about the financial
8 status of those competitors, do you not?

9 A. Yes, sir.

10:40

10 Q. And you don't freely exchange that
11 information among these competitors, do you?

12 A. No.

13 Q. Because you consider that would be
14 a conflict of interest?

10:40

15 A. Yes.

16 Q. -- and unethical?

17 A. And unethical, yes.

18 Q. And detrimental to the client?

19 A. Potentially, yes.

10:40

20 Q. If your -- if you've got these two
21 competing clients in your bank and one client
22 asks you to do something which you know would
23 financially harm the other client, what do you
24 do about it? Do you tell them you can't do
25 it? Do you tell them to find another bank?

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10:41 1 Or what's your course of action?

2 A. I'm not sure that I've ever been
3 involved in that facts and circumstances.

4 Q. Well, what if this -- what if this
10:41 5 client came to you and said, "Look, we happen
6 to know that X Company is very vulnerable at
7 this point in time, and we need some capital
8 to make a run at them and to try to take their
9 market share"? Now, that's divulging certain

10:41 10 proprietary information to you that's
11 beneficial to this one client, but certainly
12 detrimental to the other client. How do you
13 separated those two in your mind? How do you
14 go forward and loan the money, give the
10:41 15 capital that that one client needs so he can
16 kill the other client?

17 A. We would just have to look at that
18 request in and of itself and is that a
19 legitimate activity from a bank lending
10:41 20 standpoint for us to be involved in.

21 Q. Well, you're in the business of
22 loaning money and you've got a client who pays
23 their debt, pays the service on the debt, at
24 least, and the bank continues to have a
10:41 25 relationship with them and they want money to

42 1 go and basically wipe out one of your other
2 clients. So do you play judge and jury, so to
3 speak, and make a decision about whether
4 you're going to interfere with that business
10:42 5 move or not, whether you're just going to do
6 what you should do for this client and loan
7 them the money? That's what they've come to
8 you for.

9 A. We'd have to look at all the facts
10:42 10 and circumstances. It might involve
11 discussions with, you know, legal counsel or
12 others as to the appropriate action to be
13 taken, and would try to determine the most
14 appropriate thing to do, either to make the
10:43 15 loan or not.

16 Q. Are you aware of any instance of
17 such a scenario occurring in your entire
18 history with any banking organization?

19 A. Nothing comes to mind right now.
10:43 20 We're not out in an area where someone -- you
21 know, buying somebody else is that common. We
22 don't have a lot of big companies or those
23 types of things in our area.

24 Q. Well, it wouldn't even have to be
43 25 a big company. It could be a small company.

10:43 1 A. I understand that.
2 Q. Just any competitor.
3 A. Just nothing comes to mind.
4 Q. Do you now understand, with that
10:43 5 example, what I'm talking about in terms of a
6 conflict of interest?
7 A. Yeah. I think.
8 Q. You recognize that to be a
9 conflict?
10:43 10 A. Yeah, it could be.
11 Q. Puts you in a position where you
12 really are concerned about which way to go
13 because if you do an act for one client, it
14 could be detrimental to the other client and
10:43 15 that you serve the same interest of those
16 clients?
17 A. (Witness nods.)
18 Q. Right?
19 A. Yes.
10:44 20 Q. By the same token, you're working
21 for the tobacco industry in this case. Don't
22 you think that there's a conflict of interest
23 with the work that you do for the Ronald
24 McDonald House or the United Way?
10:44 25 A. I'm not aware of any conflict that

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44 1 would be between the activities of those two. 1 24:01
 2 Ronald McDonald House is, as you know, a 2
 3 children's charity organization that primarily 3
 4 provides housing and those types of things for 4
 10:44 5 families of critically ill children. 5 25:01
 6 Q. And tobacco makes people 6
 7 critically ill, right? 7
 8 A. I don't know about that. 8
 9 Q. You don't know that tobacco causes 9
 10:44 10 heart disease, lung disease and certain forms 10 26:01
 11 of cancer? 11
 12 A. I think that's outside of the area 12
 13 that I need to -- 13
 14 Q. I understand. 14
 10:45 15 A. -- give my expert -- 15 27:01
 16 Q. Give me your lay opinion. I'm not 16
 17 asking you as a doctor. I'm asking you as a 17
 18 citizen, John Q. Public. Don't you know 18
 19 that -- 19
 10:45 20 A. I don't know that it causes those 20 28:01
 21 things. It may be one of the factors or may 21
 22 make a certain condition better or worse, but 22
 23 I don't know it specifically causes any 23
 24 illness. 24
 45 25 Q. Well, what is lacking in the 25 29:01

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10:45 1 proof, in your mind?

2 A. I guess there seems to be
3 conflicting studies and information. There
4 doesn't seem to be a clear decision one way or
10:45 5 the other within the medical community about,
6 you know, cause and effect. There are a lot
7 of other factors involved, you know,
8 life-style, hereditary, et cetera, as it
9 relates to medical conditions, health
10:45 10 conditions.

11 Q. Can you tell me of one source of
12 information that you have read or seen that
13 says that smoking does not cause heart
14 disease, lung disease, or cancer?

10:46 15 A. I can't.

16 Q. Why not? You just told me that
17 basically it hasn't been proven, and that's
18 where the loophole is. And I want to know
19 where it is and who it is and how it is that
10:46 20 you haven't been completely satisfied and
21 convinced that there is a correlation between
22 smoking and tobacco and these diseases.

23 A. I guess I tend to read the
24 newspapers and listen to the network news
10:46 25 organizations on television. There seems to

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10:46 1 be conflicting reports about -- you know, from
2 different studies, whether that be the AMA,
3 American Medical Association, or others. You
4 know, don't really watch closely entirely who
10:47 5 it is or make a note of that as to which
6 organization, but there seems to be
7 conflicting information as it relates to
8 that. I can't recall, you know, specific
9 studies on either side of that issue, that
10:47 10 they do or do not relate to health problems.
11 Just as there seems to be studies, Is salt
12 good for you, yes or no; are eggs good for
13 you, yes or no, it seems to be kind of a
14 roller coaster up and down as to whether --
10:47 15 within the medical community whether a lot of
16 factors are one way or the other, whether
17 they're bad for you or good for you.
18 Q. In your answer, I hear you
19 equating the connection between cigarettes and
10:47 20 heart disease and lung disease and cancer with
21 breast implants and diseases that are
22 allegedly caused by a leaking breast
23 implants. Is that what you're saying? That
24 the --
10:48 25 A. I don't believe I said anything

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10:48 1 relating to breast implants.

2 Q. You didn't. But you implied that
3 you haven't -- that there is conflicting
4 information from medical sources and other
10:48 5 sources. Now is that not true?

6 A. Yes. I said there's conflicting
7 medical reports.

8 Q. All right. Let's look at the
9 breast implant --

10:48 10 A. Example?

11 Q. -- example.

12 A. Okay. You brought it up, but
13 yeah, we can look at it.

14 Q. Well, you watch and have heard and
10:48 15 read the same types of information about
16 breast implants as you have about tobacco; is
17 that not fair to say?

18 A. That would be a fair comment.

19 Q. You don't selectively ignore
10:48 20 information about breast implants.

21 A. No.

22 Q. It's all in the news.

23 A. Yes, sir.

24 Q. And you know from what you've read
10:48 25 and heard and seen in the media, and in any

49 1 other publication, that it is the
2 manufacturers of the breast implants who say
3 that they don't cause these diseases, right?

4 A. I think that's their position.

10:49 5 Q. And it is their opponents who say
6 that those implants do cause the diseases?

7 A. Yeah. I believe, yeah. Class
8 action suits.

9 Q. And the same thing -- well, not
10:49 10 just class action suits? You have scientists
11 on both sides of the issue?

12 A. True.

13 Q. Right?

14 A. Right. The medical community or
10:49 15 scientific community, yes, sir.

16 Q. And you have in the tobacco case,
17 or tobacco field, you've got the tobacco
18 industry which says it doesn't cause cancer.
19 You know that.

10:49 20 A. I think that's their position.

21 Q. Well, as a matter of fact, Counsel
22 has told you that that's their position.

23 A. They -- we have not discussed what
24 their overall position is. It's been more
49 25 related to my area of the case, and I have not

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10:50 1 discussed with them one way or the other --

2 Q. Nobody has talked to you about
3 what we call causation, whether tobacco
4 products cause heart disease, lung disease or
10:50 5 different forms of cancer?

6 A. Not really.

7 Q. Well, yes or no? "Not really" is
8 yes, but no?

9 A. No. No.

10:50 10 Q. Nobody has ever talked to you
11 about that connected with this litigation?

12 A. No, sir.

13 Q. Who has talked to you about that?

14 A. I don't think anybody has really
10:50 15 talked to me about that other than just, you
16 know, reading articles or general information
17 that we were discussing previously relating
18 to, you know, scientific studies of what
19 causes various diseases.

10:50 20 Q. All right. Back to the example
21 with the cigarettes. You've got the tobacco
22 industry on one side saying it doesn't cause
23 these diseases, and you've got who on the
24 other side? The American Cancer Society?
10:50 25 They say that tobacco causes cancer, right?

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51 1 A. I believe?

2 Q. And heart and lung disease?

3 A. (Witness nods.)

4 Q. You've read that, have you not?

10:51 5 A. I've seen things that -- yeah.

6 Q. Well, did you doubt what the

7 American Cancer Society was reporting?

8 A. I did not doubt what they were

9 reporting. I guess I was aware that there's

10:51 10 conflicting information in the marketplace or

11 in the general knowledge area, that their

12 opinion is one of many.

13 Q. You assigned a certain amount of

14 weight to what they had to say?

10:51 15 A. Yeah.

16 Q. Same thing with the American Heart

17 Association and the American Lung

18 Association.

19 A. Yes.

10:51 20 Q. Any other opponent of the tobacco

21 industry, as far as smoking or use of tobacco

22 products is concerned?

23 A. Yeah. Yes.

24 Q. And you don't see any conflict in

10:52 25 what you're doing for the tobacco industry in

10:52 1 this case and any other social or charitable
2 activity for one of these health or human
3 services organizations, if you will?

4 A. No, sir.

10:52 5 Q. You're basically working today for
6 a company that -- give you the benefit of the
7 doubt for the purposes of this deposition --
8 arguably -- and that's not what we contend,
9 but just for your purposes -- arguably,
10:52 10 because that's what you said, you're not
11 convinced, causes heart disease, lung disease,
12 and cancer, and you're serving on the board of
13 these charitable organizations that try with
14 all their resources to help those who need
10:53 15 help socially, economically, and medically?

16 A. I believe I've been retained by
17 one of the law firms rather than directly by
18 the companies that are involved in this
19 litigation.

10:53 20 Q. But where is your money coming
21 from?

22 A. I got the check from the law
23 firm. I don't --

24 Q. You have not inquired as to where
10:53 25 the money is coming from?

53 1 A. No. Both of the firms, I guess, 42:01
 2 that I'm aware of, they're major-named 2
 3 organizations in the state of Texas, so I have
 4 not inquired of them where the funds are
 10:53 5 coming from. 2 42:01

6 Q. In the banking industry, you have
 7 to make reports of deposits over and above a
 8 certain amount, do you not? 8

9 A. Cash deposits, yes. 9

10:53 10 Q. And is it fair to say that in the 10:53
 11 banking industry you are always on the lookout
 12 for operations that might be trying to launder
 13 money or conduct some type of illegal activity
 14 which the federal authorities would be
 10:54 15 interested in? 21 22:01

16 A. Yes. We have that responsibility,
 17 and we do try to comply with that. 21

18 Q. But in this case, you're just 21
 19 taking money from a law firm and you've never
 10:54 20 inquired or thought about whether it's coming 22:01
 21 from the tobacco industry or not? 22

22 A. I have not inquired about that. 22

23 Q. But you know that that's where
 24 it's coming from. 22

54 25 A. It probably is coming from the 22 22

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10:54 1 tobacco companies.

2 Q. I mean, you're not suggesting to
3 the ladies and gentlemen of this jury that you
4 think that because the contact was by an
10:54 5 attorney and because you're sitting in one of
6 the members of the tobacco industry's lawyers'
7 offices today giving a deposition that you're
8 simply working for a law firm and not for the
9 industry?

10:55 10 A. You know, I think they should be
11 presented all the facts, the jury should, and
12 they can make their own mind up as it relates
13 to that. I'm not trying to mislead them in
14 any way as it relates to that. I think yes,
10:55 15 indirectly I would be working for the tobacco
16 companies.

17 Q. Well --

18 A. Or that side of the case.

19 Q. Jones, Day is not a party to the
10:55 20 lawsuit other than in a lawyer capacity,
21 right?

22 A. That's my understanding of it.
23 That's your area, not mine. But that's my
24 understanding of it.

10:55 25 Q. Well, have you ever seen any

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55

1

documents from the lawsuit?

2

A. What do you mean as far as

3

documents?

4

Q. Like the papers that are filed in

10:55

5

the court.

6

A. Not that I'm aware of.

7

Q. Did you ever receive a deposition

8

notice in this case?

9

A. No, sir.

10:55

10

Q. How is it that you knew to be here

11

today?

12

A. Deborah Savarese contacted me

13

or actually Deborah and Andrew, both.

14

Conference call.

10:56

15

Q. Told you to be here at this day

16

and this time.

17

A. Yes, sir.

18

Q. For this purpose.

19

A. Yes, sir.

10:56

20

Q. And who did you meet with before

21

your deposition?

22

A. Deborah and Andrew.

23

Q. And how many times have you met

24

with them and for how long did you meet?

56

25

A. That's a -- you mean just in

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10:56 1 preparation for today, or just in general over
2 the last several months? I've been engaged
3 for five or six months now.

4 Q. The entire period.

10:56 5 A. I've met with them four or five
6 times.

7 Q. And for how long each time?

8 A. Varied from two to five hours.

9 Q. Each time?

10:56 10 A. Each time.

11 Q. And you would meet here in the
12 Jones, Day offices?

13 A. No, sir. Most -- well, most of
14 the time I believe they traveled to Lubbock
10:56 15 and met with me in my office. This is the
16 first time I have been here in these offices.
17 We met in Austin. I believe they were the
18 Maroney offices.

19 Q. Right. That's who Andrew is with.

10:57 20 A. Yes. And I believe it was in
21 their offices in Austin. We had a meeting
22 there one time.

23 Q. Have you billed for all of your
24 services through and including your deposition
10:57 25 today?

57 1 A. Probably not all of today. 82:01

2 Q. What part -- 82:01

3 A. Fairly current. 82:01

4 Q. What part have you not billed for? 82:01

10:57 5 A. Probably some review and time in 82:01

6 the last week or two. 82:01

7 Q. How many hours is that that you 82:01

8 have not billed for up through the end of 82:01

9 today, 5:00 o'clock today? 82:01

10:57 10 A. I would have to go back and look 82:01

11 at my notes. Probably in the 10-hour -- 10 to 11

12 12 hours range. 82:01

13 Q. How much are you -- 82:01

14 A. Some of that will depend on how 82:01

10:58 15 long we go today. 82:01

16 Q. Well, let's just assume we just go 82:01

17 to 5:00. 82:01

18 A. Okay. 82:01

19 Q. Ten to 12 hours? 82:01

10:58 20 A. Yeah. 82:01

21 Q. How much are you being paid per 82:01

22 hour for your services? 82:01

23 A. I am being paid \$250 per hour. 82:01

24 Q. And who set that rate? 82:01

10:58 25 A. We discussed that rate or 82:01

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10:58 1 negotiated that rate, I guess, between myself
2 and Andrew.

3 Q. Did Andrew say, "Look, tell me
4 what you've done this for in the past and
10:58 5 we'll pay that"?

6 A. No, sir.

7 Q. Did he say, "This is what we have
8 been paying for experts in this case"?

9 A. No, sir.

10:58 10 Q. Then how is it that you came to
11 250? Had you charged 250 an hour for other
12 consulting services?

13 A. No. I discussed the fee with
14 Mr. Weiss that we discussed earlier, because
10:58 15 he is a -- in addition to knowing him, he's a
16 friend of mine. He is one of our board
17 members for the bank, and I consider him a
18 friend and advisor. And asked him what he
19 thought would be appropriate, because I'm -- I
10:59 20 don't do this a lot and things change. How
21 much value or rates change during time
22 periods. And between discussions with him and
23 negotiations with Andrew, that's the
24 arrangement that we came up with.

10:59 25 Q. How many times have you actually

59

1 been hired to give testimony in a case?

2 A. One other time.

3 Q. And what case was that?

4 A. It was in a bankruptcy case

10:59

5 relating to a bank holding company.

6 Q. What was the subject of your
7 testimony in that case?

8 A. As to the value of the bank, the
9 bank or the bank stock, if you will, that was

10:59

10 owned by the bank holding company. It was in

11 the mid-'80s. I do not know the exact date.

12 Q. Did you charge 250 an hour for
13 that job?

14 A. No, sir. I received no
15 compensation for that particular job.

11:00

16 Q. Why not?

17 A. Another board member of the bank,
18 at that point in time, asked me to do that as
19 a favor to him, and I did.

11:00

20 Q. Do you know what Mr. Weiss -- what
21 his connection with this lawsuit is? Or
22 Weiss --

23 A. Weiss, I believe.

24 Q. Do you know what his connection
25 with the lawsuit is?

00

11:00 1 A. My understanding is, is that he is
2 an expert witness also.

3 Q. An attorney who is an expert
4 witness?

11:00 5 A. Yeah. Yeah, I believe it's as an
6 expert witness. I'm not certain if he's -- I
7 don't think his firm is representing anybody,
8 but yeah, I think he's as an expert witness.

9 Q. Do you know what area it is that
11:00 10 he's testifying to or in?

11 A. My understanding of it is it
12 primarily relates to the ERS, Employees
13 Retirement System of Texas, which is the
14 organization that runs the statewide health
11:01 15 plan and also some legislative matters,
16 funding and those types of things, because of
17 his involvement in State government.

18 Q. We'll get to the -- those matters
19 in just a minute.

11:01 20 Did Mr. Weiss discuss with you
21 anything about his testimony in this case?

22 A. No. He has not discussed that
23 with me. The only thing I'm aware of is the
24 meeting that we had in Austin was a joint
11:01 25 meeting where we were discussing common areas,

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11:01 1 I guess, where kind of what he is testifying
2 to overlaps some of the areas that I'm
3 involved in.

4 Q. Who else was there?

11:01 5 A. Deborah Savarese and Andrew
6 MacRae.

7 Q. Was there a time when he
8 approached you without anybody else
9 accompanying him?

11:02 10 A. Mr. Weiss?

11 Q. Yes. With regard to your
12 testifying in this case?

13 A. No, sir. Other than the initial
14 contact that we discussed earlier, the initial
15 contact where he was -- discussed -- you know,
16 inquiring about my background and involvement
17 with those health organizations -- or health
18 plans, if you will, and then my willingness or
19 not to be able to participate or testify, if
11:02 20 you will, because of timing. He's aware of my
21 job responsibilities within the bank.

22 Q. And that first initial contact was
23 by telephone, was it not?

24 A. Yes, sir, it was.

11:02 25 Q. And the second meeting that y'all

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11:02 1 had was in Lubbock with these two attorneys?

2 A. No. The second meeting was in
3 Austin with these two --

4 Q. Okay.

11:02 5 A. -- attorneys. I believe at that
6 time, I think Mr. Weiss was still living and
7 officing in Austin, and for whatever reason
8 that was deemed to be the most convenient
9 location, which was fine with me.

11:03 10 Q. Well, it's easy to get there.
11 Southwest flies from Lubbock to Austin, right?

12 A. That's correct.

13 Q. Many times a day.

14 A. A direct flight even.

15 Q. That's right.

16 MR. MacRAE: Are we close to
17 a break point, Bob?

18 MR. SCHWARTZ: About five
19 minutes.

11:03 20 Q. (By Mr. Schwartz) Can you tell me
21 about the next meeting that you had and who
22 was there?

23 A. The next meeting after Austin
24 or --

11:03 25 Q. Yes, sir. And when I talk about

03 1 the next meeting, I'm talking about with the
2 attorneys or Mr. Weiss or anybody else
3 connected with the case.

11:03 4 A. Anybody? I believe the -- you
5 know, I guess if you want -- what do you
6 want? Specifics on when we met or which times
7 or --

8 Q. When and where.

9 A. Okay.

11:03 10 Q. Who was there.

11 A. Who was there? After I discussed,
12 they called, I believe, as a follow-up, as I
13 indicated. They did call and talk further
14 about that. They wanted to come out and have
11:03 15 further discussions about whether I would be a
16 good fit as a witness and have appropriate
17 information. They came out in early May, I
18 believe it was Andrew and Deborah, came out to
19 my offices in Lubbock and we met and talked.

11:04 20 And I think they came back again. And like I
21 said, I can look back if I need to on records,
22 but came back and met again maybe in the late
23 May, June time period. And then we had the
24 meeting in Austin in July, and then they've
25 come out to Lubbock one other time since

11:04 1 July. Four or five --

2 Q. What do you mean good fit? I'm
3 sorry. I didn't mean to cut you off.

4 A. No, that's fine. Go ahead.

11:04 5 Q. What did you say? Four what?

6 A. Four or five times. I believe
7 that's correct.

8 Q. What did you mean, determine if
9 you were a good fit?

11:04 10 A. Well, I guess whether my
11 information and my background would --
12 whatever criteria they had or additional
13 information that they needed, whether that was
14 something that I could supply. You know, as

11:05 15 we indicated, I don't advertise or -- you
16 know, I don't normally do testimony, so I
17 guess, you know, there would be no way for
18 them to know whether I could provide
19 information that would be helpful to them
20 without coming out and talking to me.

21 Q. And did someone inform you that,
22 in fact, you would be a good fit in the
23 tobacco side of this lawsuit?

24 A. Yes. They --

11:05 25 Q. Who? Who was that?

11:05 1 A. Deborah.

2 Q. What did she say?

3 A. It was, I think, at the conclusion

4 of the first day, the first meeting that we

11:05 5 had that said, you know, based on our

6 discussions of the information that I had and

7 the background, that she thought that I would

8 be helpful to them and that they were going to

9 move forward with employing me as an expert

11:06 10 witness.

11 Q. On the tobacco side of the

12 lawsuit.

13 A. Yes. I assumed that, yes, since

14 they were representing the tobacco side.

11:06 15 Q. Well --

16 A. I don't think they would do any

17 hiring for y'all or for the other side.

18 Q. Other than -- all right.

19 Different from what Mr. Weiss told you, the

11:06 20 two lawyers that met with you from the tobacco

21 side of the case made sure that you understood

22 on which side they worked.

23 A. Yes. They informed me who they

24 were representing. I can't repeat the nice

11:06 25 long list of tobacco companies, but yes, they

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11:06 1 made me aware of who they were representing.

2 Q. Did you ever talk with Mr. Weiss
3 about how much he was getting and how much you
4 should get for your testimony in this case?

11:06 5 A. I think, as I stated earlier,
6 yes. I called Mr. Weiss and discussed with
7 him what I thought -- asked him what he
8 thought would be an appropriate rate for me to
9 charge. I did not inquire of what he's
11:07 10 charging. You know, I think that's his
11 business and not my business, and so I did not
12 inquire.

13 Q. Well, what did he tell you you
14 should charge?

11:07 15 A. He felt like that the \$250 an hour
16 would be an appropriate rate for this type of
17 work and in that regard.

18 Q. Do you know how much you have been
19 paid for the billing that you've submitted to
11:07 20 date?

21 A. To date I have been paid
22 approximately \$10,000.

23 Q. Is there still work in progress as
24 far as your opinions are concerned other than
11:07 25 what you haven't billed for for your

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07 1 deposition today or revamping the opinions or
2 working with these lawyers or anything else?

3 A. Not that I'm aware of. They
4 continue to supply me information and request
11:08 5 that I review it, and I have not discussed
6 with them how long that will continue. I
7 guess the main focus has been this deposition,
8 to this point in time. Would be kind of, I
9 guess, a milestone or a stopping point. And
11:08 10 then I assume we'll have some discussion as to
11 any future involvement.

12 Q. At any of these meetings that
13 you've had with the lawyers, did anybody other
14 than Deborah and Andrew show up?

11:08 15 A. No, I don't -- before today, no.

16 Q. All right. Who is it that you've
17 met in addition to these two lawyers?

18 A. Today y'all are going to have to
19 help me with the names.

11:08 20 THE WITNESS: Can y'all

21 Q. (By MR. Schwartz) Well, they
22 can't testify --

23 A. They can't testify? Okay. Two
24 lawyers that work for Jones, Day.

09 25 Q. Did they discuss your deposition

11:09 1 with you or the case, or did they just greet
2 you and say, "Nice to have you"?

3 A. We discussed the deposition.

4 Q. And what was discussed?

11:09 5 A. They reviewed with me questions
6 that had been asked of other expert witnesses
7 in the case and tried to prepare me for the
8 general area that you would be asking about.

9 Q. Did they review questions with you
11:09 10 that I had asked other witnesses?

11 A. Yes, I believe so. They did not
12 attribute them to you personally. They tended
13 to say that the other side or the lawyers were
14 asking these types of questions versus you
11:09 15 personally.

16 Q. What types of questions were they
17 showing you or asking you to be wary of?

18 A. I don't know whether they said be
19 wary of them or not, but they said be aware
11:10 20 of.

21 Q. Okay.

22 A. Questions relating to
23 hypotheticals, questions relating to tobacco,
24 you know, the use of tobacco products or my
11:10 25 viewpoints towards that.

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10 1 Q. What about causation, whether
2 tobacco causes cancer or any lung or heart
3 disease?

11:10 4 A. Just their -- only advice there
5 was to make sure that I understood the
6 question. And that would relate to any type
7 of question in addition to causation, but
8 that -- be careful about what the question is,
9 I think, which is something you should do in
11:10 10 any case of making sure that you're answering
11 the question that was asked and not something
12 else, which would tend to confuse people.

13 Q. Did they go over questions that
14 were asked of Mr. Weiss yesterday?

11:11 15 A. I don't remember specifically
16 anything attributed to his deposition.

17 Q. What answers did they suggest or
18 tell you that you should give in response to
19 what particular question --

11:11 20 A. They didn't --

21 Q. -- or questions?

22 A. They did not tell me what to say
23 or how to respond -- you know, what to say in
24 that regard. Just more general comments of
11 25 being accurate, careful, those types of

11:11 1 general guidelines was all that was given.

2 MS. SAVARESE: We about ready
3 for a break, Bob?

4 MR. SCHWARTZ: Yeah. Just

11:11 5 one second.

6 Q. (By Mr. Schwartz) You want to
7 take a short break?

8 A. I would like one.

9 Q. I think we all want one. I am
11:11 10 going to ask you the same types of questions
11 about communications with attorneys during the
12 break. When we come back, we'll continue
13 initially talking about your past, especially
14 your resume and some biographical information.

11:12 15 A. Okay.

16 THE VIDEOGRAPHER: We're off
17 the record.

18 (A recess was taken.)

19 THE VIDEOGRAPHER: We're on
11:31 20 the record.

21 Q. (By Mr. Schwartz) Mr. Cosby,
22 during the break, did you talk with either one
23 of the lawyers here with you today?

24 A. Yes, sir.

11:31 25 Q. Did you talk about any of your

51716 9685

31

1 testimony that you had already given?

2 A. Just in general.

3 Q. All right. What was said in

4 general, verbatim, if you can remember,

11:31

5 please?

6 A. In general, the -- my attorneys

7 indicated to be sure and listen to the

8 question carefully and make sure that I'm

9 responding to your question, and reminded me

11:31

10 that if I don't understand to ask you to

11 repeat it, in that regard.

12 Q. Let me stop you right there.

13 A. Sure.

14 Q. Was there some question that I

11:32

15 asked that you think now that you didn't

16 understand before you answered it?

17 A. Nothing comes to mind.

18 Q. Okay. Did they give you an

19 example of a question that they thought you

11:32

20 didn't understand when you answered?

21 A. No. I think we did discuss

22 phraseology, if you will, and we did -- and I

23 believe I brought it up, was the discussion

24 of -- I believe this is your wording, stumping

32

25 for the tobacco case -- tobacco companies or

-11:32 1 whatever. And I think that is -- was not my
2 wording.

3 Q. It wasn't. It was mine. Is that
4 objectionable to you in some way?

11:32 5 A. It's not necessarily
6 objectionable, it's just different than the
7 wording that I would use and I -- yeah.

8 Q. Did you understand what I meant by
9 it when I used it in the question?

11:32 10 A. I think so. But, I mean, it's
11 that type of discussion, to make sure that I
12 understood what it was.

13 Q. Actually, both sides of this
14 lawsuit have the same interest in you
15 understanding our questions. They want to
16 make sure that you only answer the question,
17 and I want to make sure that we can rely on
18 your answer and that you won't change it later
19 or at trial say you didn't understand it.

11:33 20 A. Okay.

21 Q. Okay? What else was talked about?

22 A. Once again, just general
23 discussion of the process. Nothing really
24 specific.

11:33 25 Q. But can you remember verbatim what

33 1 the discussion was?

2 A. No, I can't.

3 Q. How long did y'all meet for?

4 About five minutes? Ten minutes?

11:33 5 A. Something like that.

6 Q. Any other discussion that you need

7 to tell me about?

8 A. No.

9 Q. In your disclosure information -

11:34 10 and do you have a copy of that with you, by

11 chance?

12 A. No, sir, I don't.

13 Q. All right. I happen to have

14 brought a packet of -- or the packet. I'm

11:34 15 going to mark the entire packet as Cosby 1.

16 Okay?

17 A. Okay.

18 Q. There are different items

19 contained in the packet. We'll flip through

11:34 20 it and go page by page, okay?

21 A. Okay.

22 (Deposition Exhibit 1

23 was marked.)

24 Q. (By Mr. Schwartz) Have you ever

34 25 seen what I've marked as Cosby 1 before?

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11:34 1 A. Yes.

2 Q. Would you look at all the pages
3 and tell me if you believe that it's all there
4 or if there's something missing?

11:35 5 A. I don't know what you mean as far
6 as something missing. There are different
7 documents, but I think -- I believe they're
8 complete.

9 Q. That looks like the complete set
11:35 10 of documents that you were shown that
11 reflected what your expert testimony would be
12 in this case?

13 A. Yes, sir.

14 Q. And that includes a -- a general
11:35 15 summary of what your expert opinions will be
16 on the first page, right?

17 A. Yes. I believe this was the
18 initial submission.

19 Q. When was that initial submission
11:35 20 generated?

21 A. Around the first of June.

22 Q. Now, when you say "initial
23 submission," that indicates to me that you
24 submitted that to the lawyers for publication.

11:35 25 A. Actually, what we did was over the

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35

1 course of the meetings in discussing this,
2 they or one of their staff members drafted
3 this from the discussions that we had.

11:36

4 Q. All right. Did they tell you the
5 areas in which they needed expert testimony
6 from you for this case?

7 A. I believe they indicated that the
8 areas -- yes, that they would like for me to
9 testify on.

11:36

10 Q. And through your conversations in
11 the second meeting, I would suppose, or third
12 meeting, these opinions were generated?

13 A. Yes, sir.

11:36

14 Q. Second meeting or third meeting,
15 do you think?

16 A. Probably the third meeting.

11:36

17 Q. But they weren't written down in
18 this form -- this was given to you or shown to
19 you later in the typed form that we have
20 before us today?

21 A. That's correct.

22 Q. If you go to the next page, there
23 is a copy of your resume.

24 A. Yes, sir.

36

25 Q. And we've already found that there

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11:37 1 is one incorrect item on there, that is, that
2 you're not an officer at Ronald McDonald House
3 anymore.

4 A. That's right.

11:37 5 Q. Is anything else on this resume
6 inaccurate or wrong?

7 A. I do not see anything else.

8 Q. When did you generate or update
9 last this resume?

11:37 10 A. It would have been in the spring
11 of this year, 1997.

12 Q. And that is before you went off
13 the --

14 A. Yes.

11:37 15 Q. -- position that you held as an
16 officer in the Ronald McDonald House?

17 A. Yes, sir.

18 Q. And next is a document that's
19 called the disclosure statement, right?

11:37 20 A. Yes, sir.

21 Q. And that disclosure statement
22 itemizes your opinions, does it not?

23 A. Yes. It's a more detailed
24 presentation of my opinions.

11:38 25 Q. To the best of your knowledge, did

51716 9691

11:38 1 your opinions change from the second meeting 1 00:11
2 when you generated this general itemization or 2
3 listing of your opinions, to the time when the 3
4 disclosure statement where it's -- 4
11:38 5 A. No. 5 00:11
6 Q. -- more elaborately stated. 6
7 occurred? 7
8 A. No, sir. 8
9 Q. No, sir? 9
11:38 10 A. No, sir. 10 00:11
11 Q. What about these documents listed 11
12 on the back of that? There's three pages. 12
13 A. Yes, sir. 13
14 Q. These are documents that you 14
11:38 15 reviewed in formulating your opinion? 15 00:11
16 A. Yes, sir. 16
17 Q. And that were used in whole or in 17
18 part in formulating that opinion? 18
19 A. That's correct. 19
11:38 20 Q. All right. We're going to go 20 00:11
21 through those in just a few minutes. 21
22 Let's turn, if you would, please, 22
23 to your resume one more time. 23
24 A. Sure. 24
11:38 25 Q. What is it that you did for Ford, 25 00:11

51716 9692

11:39 1 Bank Group, Inc. on the medical benefits
2 program coordination?

3 A. I was responsible for discussions
4 with our outside -- we had an independent
11:39 5 insurance agent that actually received bids
6 and proposals from companies to provide
7 healthcare for our employees of our various
8 banks. And we did that over a term of a
9 number of years. In addition to that, we
11:39 10 moved into a -- what most people consider a
11 self-insured basis as we grew and got a larger
12 group, and we moved into that process and was
13 involved in the coordination and the purchase
14 of those types of products relating to that.
11:40 15 Developed the benefit plans, added things like
16 dental insurance and items like that, general
17 employee benefit-related plan items.

18 Q. For Ford Bank Group, Inc. only?

19 A. I -- the -- we had a -- for a time
11:40 20 period, our banks were separate and not owned
21 all by one holding company. We had a series
22 of smaller to medium-sized banks that we all
23 controlled through common ownership, but were
24 not all within Ford Bank Group. It was the
11:40 25 resulting entity, after some seven or eight

40 1 years of process and mergers and et cetera,
2 but were not -- it was not the only entity or
3 organization that I worked for:

4 Q. What were the names of the other
11:41 5 ones, if you can remember?

6 A. There's a number of them.

7 Q. More than 10?

8 A. Probably 10 or more, yes, sir.

9 Q. Do you remember any of them?

11:41 10 A. Sure. They -- we had the -- they
11 were bank holding companies and/or the banks
12 that were owned by those bank holding
13 companies. Do you want the names of the banks
14 or the names of the bank holding companies, or
11:41 15 both?

16 Q. Both.

17 A. Okay. We had -- one of the banks
18 during that time period was called Bank of the
19 West in Lubbock, Texas. It was owned
11:41 20 primarily by Lubbock Ban Corporation, Inc.
21 It's B-a-n, then C-o-r-p. We had the West
22 Texas Ban Corporation, which owned the First
23 National Bank of Post. We had the Yoakum
24 County State Bank in Denver City, Texas.

42 25 Q. Who owned that bank?

11:42 1 A. It was owned by a holding
2 company. There was actually two holding
3 companies, and I do not remember the name of
4 both of them. One of them was Denver City
11:42 5 Bancshares.

6 Q. All right.

7 A. We had another bank, the First
8 State Bank of Crane, Texas, C-r-a-n-e. It was
9 owned by Permian Financial Corp.

11:43 10 We also had a bank named Coleman
11 Bank in Coleman, Texas. And I believe the
12 name of that holding company was Coleman
13 Bancshares, b-a-n-c, then shares.

14 We also owned during part of that
11:43 15 time period or controlled during part of that
16 time period the Idalou State Bank.

17 Q. How do you spell that?

18 A. I-d-a-l-o-u, Idalou. It was
19 owned -- I do not remember the name of its
11:44 20 holding company.

21 We also owned the First National
22 Bank in Plainview, Texas. The name of its
23 holding company was Plainview First National
24 Bancshares.

11:44 25 We also controlled the First

44 1 National Bank of Canyon. Its holding company,
 2 I want to say, was First Canyon Bancshares.
 3 I'm not certain of that name. We also owned
 4 the First National Bank of Borger and the
 11:45 5 First National Bank in Lubbock. And it was
 6 owned by First National Bancshares.

7 Q. Is that a pretty comprehensive
 8 list?

9 A. I believe so.

11:45 10 Q. What was your ownership percentage
 11 in Ford Bank Group, Inc.?

12 A. I don't know for sure.

13 Q. Was it less than 10 percent?

14 A. Yes. It was less than

11:45 15 one percent.

16 Q. And by your ownership in the Ford
 17 Bank Group, Inc., you had ownership in Bank
 18 Corp, Inc., West Texas Ban Corp, Permian
 19 Financial Corporation, et cetera, et cetera,
 11:45 20 that held these other banks?

21 A. Somewhat, yes. The -- I guess to
 22 state it better would be that we owned those
 23 banks and those individual holding companies
 24 prior to the formation of Ford Bank Group,
 11:46 25 Inc. From a corporate entity standpoint, we

51716 9696

11:46 1 more or less merged those together. So I had
2 individual ownership in each one of those
3 banks or bank holding companies and then later
4 on had ownership in Ford Bank Group that -- at
11:46 5 a subsequent time period.

6 Q. Did any member of the tobacco
7 industry ever invest money in any of these
8 banks, to the best of your knowledge?

9 A. What do you mean by member of the
11:46 10 tobacco --

11 Q. Tobacco company.

12 A. No. To the best of my knowledge,
13 they did not.

14 Q. Were -- was Ford Bank Group, Inc.
11:46 15 or any of these other banking entities active
16 politically, such as lobbying the State
17 legislature or contributing to candidates, to
18 the best of your knowledge?

19 A. Not as a corporate entity, I don't
11:47 20 think any of these were involved. You know,
21 the bank presidents and senior management, you
22 know, had what I would perceive to be a normal
23 level of involvement in the political process.

24 Q. Have you ever gone during your
11:47 25 tenure there, your eight years -- and it's

51716 9697

11:47 1 coincidental, is it not, that it took seven to
2 eight years to unify the holdings and you were
3 only there eight years?

11:47 4 A. I don't know whether there was any
5 significant -- there was other things done
6 after I left as it relates to that. Ford Bank
7 Group was merged with a company subsequent to
8 that called United New Mexico Financial Corp
9 and became First United -- First United Bank,
11:48 10 Inc., I believe was the name. And then it was
11 subsequently sold to Norwest Corporation out
12 of Minneapolis, Minnesota.

13 Q. Why did you leave Ford Bank Group,
14 Inc.?

11:48 15 A. I believe, as we discussed
16 earlier, the extensive travel --

17 Q. Okay.

18 A. -- that was being required for
19 that position.

11:48 20 Q. During your time at Ford Bank
21 Group, Inc., were you ever involved in any
22 legislative activity such as quasi-lobbying or
23 lobbying --

24 A. No, sir.

11:48 25 Q. -- or appearing and discussing

11:48 1 issues with elected representatives from your
2 district?

3 A. No, sir.

11:48 4 Q. Do you recall discussing in the
5 bank or in your office or anywhere else while
6 you were with Ford Bank Group, Inc., any
7 legislative matters with the legislators from
8 your area?

9 A. I do not remember any
11:49 10 conversations.

11 Q. Specifically, you do not remember
12 talking with any legislator about tort reform,
13 for example?

14 A. Specifically, no. I don't
11:49 15 remember that.

16 Q. Or any type of excise tax
17 legislation, for example?

18 A. I'm not certain as it relates
19 to -- well, probably no. I'm not sure how
11:49 20 they classify the franchise tax. There was
21 some discussions during that time period about
22 how the rules and regulations relating to
23 Texas franchise taxes -- but I think that's
24 outside of the area of an excise tax.

11:49 25 Q. Have you ever worked with a

11:50 1 medical benefits program prior to the Ford
2 Bank Group, Inc. experience?

3 A. As relates to in a management
4 capacity?

11:50 5 Q. In any capacity?

6 A. I guess I was covered at Peat,
7 Marwick by a healthcare program, but that
8 would be the only involvement that I had prior
9 to my job responsibilities at Ford Bank Group.

11:50 10 Q. Did you undergo any training to

11 help you perform that task of being
12 responsible for the medical benefits program
13 at Ford Bank Group, Inc.?

14 A. No. No specific training related
15 to that.

16 Q. Just on-the-job training and
17 self-study?

18 A. Uh-huh?

19 Q. Yes?

11:51 20 A. Yes, sir. I'm sorry.

21 Q. Do you consider yourself today an
22 expert on medical benefit programs?

23 A. I have extensive experience
24 relating to medical programs. I guess that
25 would be considered to be an expert.

51716 9700

11:51 1 Q. Well, how many years have you been
2 working with medical benefits programs?

3 A. Fifteen or 16 years.

4 Q. Have you ever spoken to a civic
11:51 5 group or any other group on the subject of
6 medical benefit programs?

7 A. Civic group, no, I have not.

8 Q. Who have you spoken to or what
9 groups have you spoken to about these
11:51 10 programs? Just employees?

11 A. Employees, regents, groups -- I
12 guess, you know, general information groups
13 comprised of employees.

14 Q. Sounds like employees and
11:52 15 employers is who you've talked to about the
16 programs.

17 A. In addition to, I guess, insurance
18 companies, medical providers on a negotiation
19 basis in that regard.

11:52 20 Q. Have --

21 A. And -- go ahead.

22 Q. No, that's all right.

23 A. No, that's fine.

24 Q. If you have any more of your
11:52 25 answer, then go ahead. Otherwise --

51716 9701

52 1 A. Well, I guess I have not spoken --
2 it seemed to change when you made that as a
3 comment as to somebody I had spoken to about
4 plans versus, I guess, a formal presentation.
11:52 5 When I was at Texas Tech, we did use Peat,
6 Marwick to assist the university in going into
7 their self-insured health benefit plan. And
8 we had hired them, Texas Tech hired them, they
9 did a study, we had extensive discussions back
11:53 10 and forth.

11 Q. Had Peat, Marwick done work for
12 Texas Tech before you got there?

13 A. Yes. Not in the healthcare area,
14 but they had done work. They did an
11:53 15 accounting systems study in the mid-'80s that
16 I was aware of.

17 Q. Were you instrumental in getting
18 them to help you in the medical benefits
19 program area at Texas Tech --

11:53 20 A. Yes, sir.

21 Q. -- once you got there? And you
22 did not benefit in any form, way, or manner,
23 from their being involved there?

24 A. No, sir.

53 25 Q. Why is it that you left Texas Tech

51716 9702

11:53 1 to go with State National Bank of West Texas?

2 A. I felt like that with my
3 background and expertise, that my future
4 career would be both more challenging and
11:54 5 hopefully more financially rewarding in the
6 private sector than in the public or in the --
7 you know, not-for-profit State, whatever
8 classification you want to put the university
9 into.

11:54 10 Q. I understand we're going through
11 your background, but what expertise do you
12 contend that you hold?

13 A. I feel like that I am qualified as
14 it relates to the position of chief financial
11:54 15 officer from an accounting/financial
16 viewpoint, that those are my areas and that
17 could be applied towards, you know,
18 corporations or companies or organizations
19 that have a need for expertise in the
11:54 20 financial accounting area.

21 Q. Have you ever been published -- in
22 other words, have you written an article that
23 was published in any publication based on
24 either medical benefits program or the
11:55 25 accounting field that you consider

51716 9703

55 1 instrumental or an important part of your CEO
2 activities?

3 A. CFO?

4 Q. Did you say -- yeah, you said

11:55 5 CFO. That's right?

6 A. Yes, sir. No, not that I'm aware
7 of.

8 Q. No one has come to you and asked
9 you to write an article for a professional
10 publication or association?

11 A. No, sir.

12 Q. Have you ever spoken at any of the
13 CLE -- not CLE, continuing education programs?

14 A. Yes, I have.

11:55 15 Q. In what areas?

16 A. I have -- well, technically, I
17 guess -- yes, it was a CLE. It was a Texas
18 Tech University program relating to
19 not-for-profit accounting in a program. I was

11:56 20 instructor a couple of years of a portion of
21 that program as it relates to the financial.

22 I was not the instructor of record, but she
23 asked me to come and speak at a couple of
24 their classes. I believe it was a
25 graduate-level class, relating to

51716 9704

1 not-for-profit accounting, primarily
2 university, but more generally just
3 not-for-profit accounting.

11:56 4 Q. Have you been able to do any other
5 teaching in any other area that you feel you
6 have some expertise in?

7 A. I have not done any other teaching
8 that I'm aware of.

9 Q. You mean that you can remember?

11:56 10 A. Yes. That I can remember.

11 Q. And we have already established
12 that the work that you would do as a CFO in
13 either the accounting aspect or the
14 administration aspect would require a
11:57 15 subjective analysis and subjective
16 administration on your part?

17 A. Yes, we discussed that. I think
18 there is some subjectivity in addition to the
19 obvious accounting analysis that's involved in
11:57 20 the job.

21 Q. Was State National Bank of West
22 Texas a competitor of Ford Bank Group, Inc.
23 when you were with Ford Bank Group, Inc.?

24 A. No, it was not.

11:57 25 Q. Was Ford Bank Group, Inc. a

51716 9705

11:57

1 competitor of State National Bank of West

2 Texas once you went to State National Bank?

3 A. Yes, I guess the successor was or

4 is a competitor. State National Bank of West

11:57

5 Texas is a newly chartered bank, national

6 bank. Actually, when I left the university,

7 that was the purpose that I was charged, was

8 to assist and help. I was one of the

9 organizing officers and directors of that

11:58

10 process and required application to both the

11 office of the controller of the currency and

12 to the Federal Deposit Insurance Corporation

13 for charter rights and authority. And we

14 received that. We worked on that during 1996,

11:58

15 and then we opened on October 1st of 1996.

16 Q. Did your position with Ford Bank

17 Group, Inc. benefit you in any way in relation

18 to your position at State National Bank of

19 West Texas?

11:58

20 A. Yes, sir. I guess as it relates

21 to training and experiences and those types of

22 activities, yes, it did help me.

23 Q. What about in the sense of being a

24 competitor or working now for a competitor?

11:59

25 Did it give you some special knowledge or

-11:59 1 insight that you might otherwise not have had?

2 A. I don't believe so, because of the
3 changes, the fact the organization was sold in
4 1994. I had not been in banking since 1989.

11:59 5 There's been a number of changes over the last
6 eight or nine, 10 years, in financial
7 institutions, so I don't think I have any --
8 would have been privy to any strategies or
9 those types of things that would now apply.

11:59 10 Most of their current operations are driven by
11 Norwest Corporation, because of the timing,
12 who I never had any involvement with.

13 Q. This Texas Guaranteed Student Loan
14 Board that you were a past member of --

12:00 15 A. Yes, sir.

16 Q. -- can you tell me a little bit
17 about what that board does?

18 A. Sure. That is a -- one of the
19 statewide boards. That organization is the
12:00 20 corporation that's involved in guaranteeing,
21 as the name would imply, the student loans
22 that all of the students in Texas have access
23 to through the State for vocational, general
24 education type post-secondary education in the
12:00 25 state of Texas, is what that board does. It's

1 a seven-member board, and I was fulfilling a
2 slot at that time that related to -- I believe
3 three of those people must be people that
4 currently work for universities or
12:01 5 educational-related entities. The positions
6 are appointed by the Governor of the State of
7 Texas.

8 Q. And did your activities with the
9 Texas Guaranteed Student Loan Board cause you
12:01 10 to deal with either State agencies or State
11 legislators?

12 A. Not any more than I was already
13 involved in as it relates to Texas Tech
14 University. I did not -- was not actively
12:01 15 involved in any discussions as it relates to
16 the Guaranteed Student Loan Board.

17 Q. Is that board governed by a State
18 agency or is it a project of a State agency?

19 A. It is a separate corporation. It
12:02 20 is a quasi-governmental unit and I do not know
21 exactly how it fits into the State
22 organization. I think it's an affiliated
23 corporation, but beyond that, I can't tell you
24 the legalities of it.

25 Q. Do you know where it gets its

12:02 1 funding?

2 A. Yes. The primary funding are the
3 fees that are charged relating to the student
4 loans that the students -- that process.

12:02 5 There is a guaranteed fee associated with that
6 process and that's where they generate their
7 money.

8 Q. Okay. What about secondary
9 funding?

12:02 10 A. In addition to that, they do
11 administer a number of those loan programs and
12 keep up with them for financial institutions
13 and others, and there is an administrative fee
14 that is associated with that that provides
12:03 15 them revenue for some of their operations.

16 Q. Do they take any state or federal
17 funding?

18 A. I'm not aware of any direct State
19 funding. They do receive some federal funding
12:03 20 for some of those programs -- some of the
21 administrative fees and those things come from
22 the federal government, as I understand it.
23 Allowances and those things are provided by, I
24 believe, the Department of Education, federal.

12:03 25 Q. What about this Group Insurance

12:03 1 Advisory Committee?

2 A. Okay.

3 Q. Tell me about that.

4 A. That is a -- an advisory committee

12:04 5 made up of employees of the State of Texas

6 and/or junior and senior colleges within the

7 university or universities, or their systems,

8 across the state of Texas. This advisory

9 committee was in existence prior to Higher

12:04 10 Education joining the Uniform Group Insurance

11 Program. Higher Ed joined that in 1992. The

12 committee was expanded to include a number of

13 representatives from Higher Education, and

14 that committee advises. It is not a -- it

12:04 15 has, I guess, limited authority, but it

16 provides advice and feedback on

17 benefit-related -- health benefit-related

18 issues back to the ERS. I think technically

19 they're an advisor to the ERS board from a

12:05 20 technical standpoint.

21 Q. What group -- what State agency is

22 the Group Insurance Advisory Committee born

23 from or born of?

24 A. What do you mean what agency?

12:05 25 Q. Doesn't a State agency oversee

51716 9710

12:05 1 this particular entity?

2 A. The Employees Retirement System of
3 Texas, Inc., I believe is the -- I guess would
4 be the State agency that it advises. It
12:05 5 advises that board. I believe there's a board
6 of seven trustees.

7 Q. When is it that you served -- I'm
8 sorry.

9 A. Go ahead. That's fine.

12:05 10 Q. When is it that you served as a
11 member and the chair of the Group Insurance
12 Advisory Committee?

13 A. I believe I began my service in
14 September of 1992. I was chair of the
12:05 15 committee, I believe, in 1994-'95. The terms
16 ran from September 1 through August 31, so
17 that's the -- they ran off of the State fiscal
18 year.

19 Q. When did you end your service?

12:06 20 A. When I left the university.
21 Because of the requirement that you be an
22 employee of the State of Texas, that was
23 something I resigned from at that time. Like
24 I said, by then, it was '96. I was still on
12:06 25 the committee, but not -- no longer chair.

51716 9711

06

1 Q. What about the Texas Guaranteed
2 Student Loan Board? What was -- what were the
3 years of your service on that board?

12:06

4 A. Okay. That began in September of
5 1995. I believe I was appointed in July or
6 August of '95, but the first meeting that I
7 attended was in September. And then because I
8 was filling one of the university slots, when
9 I left the university, I needed -- I resigned
10 from that. I believe it was effective May 1st

12:07

11 of '97 -- '96. Excuse me. May 1st of '96.

12 Q. And the National Association of
13 College and University Business Officers?

12:07

14 A. Yes. That's just a trade
15 organization made up of the groups that it
16 describes, and I was a member of that while I
17 was at the university.

18 Q. So you ceased your membership in
19 1996?

12:07

20 A. Yes, sir.

21 Q. '89 to '96, right?

22 A. Yes, sir. Yes, sir.

23 Q. Were you an officeholder within
24 that association?

12:07

25 A. No, sir.

12:07 1 Q. Were you anything other than a
2 member?

3 A. No, sir.

4 Q. You didn't have -- hold any office
12:07 5 or position there?

6 A. No, sir.

7 MR. SCHWARTZ: Videographer
8 needs to change the tape.

9 THE WITNESS: Okay.

12:08 10 THE VIDEOGRAPHER: We're off
11 the record.

12 (Off-the-record
13 discussion.)

14 THE VIDEOGRAPHER: We're on
12:09 15 the record.

16 Q. (By Mr. Schwartz) Would you
17 please refer to Exhibit 1, and specifically I
18 want to go to the initial disclosure
19 statement. It should be the second page; is
12:09 20 that right? First page. I'm sorry. Do you
21 have that in front of you?

22 A. Yes.

23 Q. Before we go through these
24 opinions on the initial disclosure statement,
12:10 25 I want to ask you if there was anything that

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10 1 you were asked to do or any opinions that you
2 were asked to render or give in this case that
3 you felt and told them you could not.

4 A. No.

12:10 5 Q. Any that you felt you couldn't,
6 but you said you would do?

7 A. No.

8 Q. Are there any opinions that you
9 were asked to give in this case that you
12:10 10 refused to give?

11 A. No.

12 Q. Everything that you were asked to
13 do on behalf of the tobacco industry, as far
14 as your testimony in this case, you have
12:10 15 agreed to do and have done?

16 A. I don't -- they -- I guess the
17 phrase that I would use is that I have
18 provided various opinions listed here, and I
19 don't think they've really requested me to
12:10 20 give those opinions. They've said, "What do
21 you know about this area?" And I provided
22 those opinions.

23 Q. They haven't requested that you
24 give these opinions?

11 25 A. Outside of the contractual

12:11 1 arrangement that we have, other than telling
2 me the timing and when we needed to submit
3 various documents.

12:11 4 Q. Let me get this straight, because
5 it's confusing to me. You met four or five
6 times with lawyers from the tobacco industry
7 after you were approached by a personal
8 friend, Mr. Weiss, about giving expert
9 testimony in this case.

12:11 10 A. Yes.

11 Q. Right?

12 A. Yes, sir.

13 Q. But you've never been asked to
14 give opinions?

12:12 15 A. I guess asked to give an
16 opinion -- I would inform them of what my
17 opinion was in a particular area and they
18 would -- they would indicate what areas they
19 felt like they needed assistance or
20 clarification on and I would try to provide
21 that.

22 Q. Did you shape the areas that they
23 gave you for opinions, or did they shape your
24 opinions to fit those areas?

12:12 25 A. Could you rephrase the question?

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12 1 Q. Yeah. If you have a request of a
2 subject matter from the industry upon which
3 your testimony is supposed to relate or touch,
4 if your testimony -- in honing your testimony
12:12 5 to fit that subject matter, was it a -- in
6 other words, was it a question of making the
7 peg fit the hole, or was it a question of
8 reforming the hole so the peg fit into the
9 hole?

12:13 10 A. The way I would describe that is,
11 is that it was a joint effort on our part,
12 both the legal representatives and myself, in
13 numerous discussions, as you've indicated,
14 about what might be relevant and what might
12:13 15 not be relevant. Some of those areas, the
16 attorneys, you know, felt like already -- even
17 before I brought them up, mentioned areas that
18 I might have opinions or might have helpful
19 information, and then certain areas maybe were
12:13 20 areas that I brought up and said, "I have this
21 opinion," and they concurred that it might
22 apply to the case. And through that
23 collaborative effort, came up with this
24 initial disclosure.

13 25 Q. And they did ask your permission

12:14 1 to publish this initial disclosure to the
2 State of Texas in this lawsuit?

3 A. Yes, sir. They -- they faxed me
4 this and we made some minor modifications to
12:14 5 it, primarily grammatical and wording,
6 phraseology, those types of things. The
7 content was not modified.

8 Q. Which is exactly why I'm
9 questioning you about whether you were ever
12:14 10 requested to give any opinions. It's simply,
11 I believe, phraseology -- or phraseology, but
12 I need to know. You've done all this work,
13 you have even received a -- I would assume, a
14 final copy for your review of the initial or
12:14 15 preliminary opinions that you're going to give
16 in this case, yet you tell me that nobody
17 asked you to give opinions.

18 A. My clarification on that, I was
19 just trying to clarify that, was that my
12:15 20 understanding of that is, if somebody
21 said, "Would you give your opinion on XYZ," or
22 whatever. And I was not asked in that
23 context. It was more in what do you know
24 about or how does this particular expense or
12:15 25 feature fit into the healthcare plan, either

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15 1 the State of Texas or Texas Tech's separate
2 plan. More of an explanatory opinion, if you
3 will, or based on my background and experience
4 about a particular topic, to me, is different
12:15 5 than, "Would you issue an opinion" -- we want
6 you to issue an opinion on a particular thing
7 in that regard. So I'm not trying to be
8 argumentative, I'm trying to make it --
9 clarify the distinction between those two.

12:16 10 Q. In other words, you're saying you
11 definitely were asked to give opinions in this
12 case, just not specific opinions?

13 A. Correct.

14 Q. On this initial disclosure, it
12:16 15 states that you have your BBA in accounting
16 from Tech.

17 A. Yes, sir.

18 Q. It doesn't mention anything about
19 your business administration minor. Did you
12:16 20 get a minor degree?

21 A. No. My major was accounting.

22 Q. Okay.

23 A. But I think the actual certificate
24 is a Bachelor of Business Administration, and
16 25 then the major is listed separately, or if

12:16 1 it's requested.

2 Q. What about the service as the
3 chief financial officer for private
4 corporations? What private corporations are
12:16 5 you talking about? Those that we've discussed
6 earlier?

7 A. Yes, sir.

8 Q. Any others?

9 A. No, sir.

12:17 10 Q. Any other public universities
11 other than Texas Tech?

12 A. No, sir.

13 Q. You've gone from the public
14 sector, so to speak, to the private sector, so
12:17 15 to speak, and then back to the public sector.

16 A. No. Actually, I think it's the
17 other way around.

18 Q. Okay. That's right. It's
19 private, public, and then private again.

12:17 20 A. Yes, sir.

21 Q. What aspirations do you have for
22 the future? Go back to the public sector?

23 A. My current plans are to stay in
24 the private sector.

12:17 25 Q. All right. And your current plans

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17 1 are to stay in the areas of responsibility
2 that you shoulder right now with State
3 National Bank of West Texas?

4 A. Yes, sir.

12:18 5 Q. Basically in the banking industry?

6 A. Yes, sir.

7 Q. Do you still own the stocks in
8 those banks -- any of those banks that were
9 held by the Ford Banking Group, Inc.?

12:18 10 A. Well, they were all merged into
11 Ford Bank Group and those resulting entities
12 and then merged into Norwest. And yes, I
13 still own Norwest common stock.

14 Q. And you own stock in State
15 National Bank of West Texas?

16 A. Yes, sir.

17 Q. And they're both in Lubbock and
18 they're both competitors?

19 A. Yes, sir.

12:18 20 Q. How does that work?

21 A. Just -- it works, I guess. What
22 do you mean? In what context?

23 Q. No conflict in your mind? It
24 never presents a problem?

18 25 A. Not extensively, in my mind.

12:18 1 Norwest is a \$78 billion corporation with
2 offices nationwide. What they do or don't do
3 in Lubbock has limited impact on their overall
4 operations.

12:19 5 Q. Why did you say "not extensively,"
6 you don't think about it extensively?

7 A. Oh, I mean, I think we're all
8 aware -- most of the officers of our
9 organization came from Norwest. I think most
10 of them still own Norwest stock.

11 Q. So you're not alone?

12 A. No, sir.

13 Q. How many others made the
14 transition that you made?

12:19 15 A. Well, once again, since I never
16 technically worked for them, it was kind of
17 funny, because I was there in the '80s and not
18 at the time of the merger. Probably a very
19 high percentage of our employees are former
12:19 20 Norwest employees.

21 Q. Do the banks own each other's
22 stock?

23 A. What do you mean? As far as --

24 Q. Can the banks own each other's
12:20 25 stock, first of all? Can they be owners of

51716 9721

20 1 each other?

2 A. You mean Norwest and State
3 National?

4 Q. Yes, sir.

12:20 5 A. Our bank could not own Norwest
6 stock. Our bank holding company could own
7 Norwest stock. The same thing is true for
8 them. Norwest Bank of Texas, whatever the
9 legal entity is at the bank level, could not
12:20 10 own our bank. Their holding company, Norwest
11 Corporation, could own stock in our bank.

12 Q. Well --

13 A. Or bank holding company, either
14 one.

12:20 15 Q. Does it occur either way?

16 A. No, sir.

17 Q. Does State National or Norwest --

18 A. No, sir.

19 Q. No?

12:20 20 A. No, sir.

21 Q. Neither one of them own each
22 other's stock?

23 A. No, sir. Not that I'm aware of.
24 I guess I don't know what Norwest -- from our
25 side, yeah.

12:20 1 Q. Do you own tobacco stocks?

2 A. No, sir.

3 Q. Have you ever?

4 A. Let me back up. I have several
12:21 5 mutual fund investments and I'm not sure what
6 all they own. I do not directly own any
7 tobacco stocks.

8 Q. Other than bank shares or bank
9 stock, have you owned any stock in any
12:21 10 corporation or any other business?

11 A. It's been a long time since I've
12 owned a specific stock that was publicly
13 traded anywhere. Probably the mid-'80s.
14 Did -- during that time period bought a couple
12:21 15 of individual stocks, a couple of oil and gas
16 companies, those types. But currently
17 everything I do is through a mutual fund.

18 Q. Why is it in this initial
19 disclosure do you state that you have had
12:21 20 extensive experience in -- first of all, it's
21 stated in the third person, not the first
22 person. It's not I, I, I, it's he, he, he.
23 Did you write this?

24 A. I did not physically write it. As
12:21 25 we discussed earlier, the lawyers or one of

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12:22 1 their assistants drafted this from the
2 information in our meetings, and then I
3 reviewed it.

12:22 4 Q. And the information in here in the
5 initial disclosure and subsequent disclosure
6 are true and correct?

7 A. To the best of my knowledge, yes.

12:22 8 Q. Why does it state that Mr. Cosby
9 has extensive experience in administering
10 group health insurance plans?

11 A. I guess they felt like that was
12 important to have in there. I think that's an
13 accurate description of my experiences over
14 the last 15 years.

12:23 15 Q. What makes the experience
16 extensive?

17 A. I guess the variety that I've
18 had. The Ford Bank Group, as we discussed
19 earlier, the group -- the loose-knit group of
12:23 20 banks, that was a different type of structure
21 with a number of smaller health plans involved
22 and how you work those or manage those for the
23 most efficient, least costly approach for the
24 companies.

12:23 25 Then was involved at Texas Tech in

12:23 1 the formation of a self-insured plan for a
2 fairly large organization. We had about five
3 or 6,000 employees, counting dependents and
4 others, probably 10 to 12,000 covered lives,
12:24 5 in going from a fully insured plan to a
6 self-insured plan and the effort in those
7 things.

8 In addition to that, during that
9 time period, moved into -- when we went to
12:24 10 self-insurance, I was involved in negotiating
11 and establishing a preferred provider
12 agreement with two of the three major
13 hospitals in Lubbock, which had not been done
14 before. Was involved in that process. And
12:24 15 during the early '90s, kind of the evolution
16 of the managed care and those types of
17 organizations, either directly as -- at Texas
18 Tech or indirectly was involved in that
19 through the Group Benefits Advisory Committee
12:24 20 as the State of Texas moved into managed care
21 beginning in '92. And so feel like that that
22 is -- the use of the adjective "extensive" is
23 appropriate because of that.

24 Q. You don't have any experience with
12:25 25 the Texas Medicaid program, do you?

11:25

1 A. No, sir.

2 Q. You don't have any expertise
3 there?

4 A. No, sir.

12:25

5 Q. You, in these disclosures, are
6 rendering some opinions about the ERS, the
7 Employment Retirement System --

8 A. Yes, sir.

9 Q. -- or Employee Retirement System?

12:25

10 A. The insurance division portion of
11 the ERS.

12 Q. And you know that relates or can
13 relate to the Medicaid program?

14 A. I'm not aware of how it ties in,
15 if it does.

12:25

16 Q. Let's talk about the second
17 paragraph in your initial disclosure. It
18 says, "Mr. Cosby is expected to provide
19 factual background information about Texas
20 Tech and its health insurance plans during
21 the '80s through the '90s."

12:26

22 A. Yes, sir.

23 Q. Why would we want to know about
24 Texas Tech's health insurance plans for that
25 decade?

12:26

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12:26 1 A. My understanding of that is, is
2 that that could or does have some impact on
3 the projected cost, I believe, that relates to
4 the basis of the lawsuit that we're involved
12:26 5 in, that how they use that information could
6 then maybe impact the determination of
7 damages, if any.

8 Q. Have you been shown or have you
9 reviewed or have you been told anything about
12:27 10 the State's damages in this lawsuit?

11 A. Have not been told a significant
12 amount. I have reviewed two forecasts or
13 models, if you will, prepared -- one's by
14 Vincent Miller, I believe, and the second one
12:27 15 is by Wendy Max. And I have reviewed those
16 models. I am not a model expert, but I have
17 reviewed those.

18 Q. Do you have any criticisms of
19 those models or of either Ms. Max or
12:27 20 Mr. Miller's work?

21 A. The models appear to be somewhat
22 flawed in their input items as it relates to
23 taking premiums versus the actual claims
24 cost. So yes, I do have some comments as it
12:27 25 relates to those.

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12:27 1 Q. Well, criticisms, not comments. 2
2 A. Criticisms. That's better. 3
3 Criticisms is a better statement. 4
4 Q. If you have criticisms about the 5
12:28 5 input, does that mean you have criticisms 6
6 about the methodology used? 7
7 A. Yes, sir. 8
8 Q. Are you a person who could have 9
9 created a model like this to show what the 10
12:28 10 damages were and would be for the State of 11
11 Texas based on the Medicaid program? 12
12 A. No. I don't believe that would be 13
13 within my area of expertise. 14
14 Q. Well, how is it -- 15
12:28 15 A. Mine relates to input, the items 16
16 that you're using to calculate a subsequent 17
17 number. It's very difficult if you start with 18
18 the wrong inputs to come up with the right 19
19 answer. 20
12:28 20 Q. Do you understand the model? 21
21 A. I think I do. I don't understand 22
22 it, you know, in great depth, but I do have a 23
23 general -- I think a good general 24
24 understanding of it. 25
12:29 25 Q. How is it if you don't totally

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-12:29 1 understand the model that you can be critical
2 of any aspect of the model?

3 A. Because I guess they explain in
4 that, in the footnotes or the description of
12:29 5 what numbers they were using to run the
6 process or the calculation or forecast, and I
7 have an opinion that some of those are the
8 inappropriate numbers, to start with.

9 Q. Out of your extensive experience
12:29 10 in administering group health insurance plans,
11 you're qualified to criticize a damage model
12 that's used by the State of Texas in its
13 lawsuit against the tobacco industry?

14 A. Certain features of that model. I
12:29 15 am not qualified to comment on the overall
16 model, but there are certain features of that
17 that I do believe I'm qualified to comment on.

18 Q. Well, you just told me that the
19 input is flawed and so the model is flawed.

12:30 20 A. Okay.

21 Q. So are you or are you not saying
22 that your extensive experience in
23 administering group health insurance plans
24 qualifies you to criticize the damages model
12:30 25 that the State's using in this case?

30 1 A. I think it qualifies me to comment
2 on certain features of the model.

3 Q. Well, I understand that. But
4 you -- I don't know why you're not answering
12:30 5 my question. Is it that you don't understand
6 what I'm asking, or is it a difficult
7 question, or what?

8 A. I feel like I'm answering it,
9 so --

12:30 10 Q. Well, let's see. Okay.

11 A. Okay.

12 Q. I'll ask the court reporter to
13 read the question back. I'm going to make a
14 written note of what he's reading back, and if
12:31 15 you want to do that, I'll give you some paper
16 as well, because I want to make sure that I'm
17 not, number one, being repetitive, and, number
18 two, I want to make sure we get an answer for
19 the question. Do you want a piece of paper?

12:31 20 A. Yeah. That will be fine.

21 Q. Here is a clean piece of paper.
22 Do you have a pen?

23 A. Yes, sir.

24 Q. Okay.

25 (Off-the-record
discussion.)

(The reporter read back the requested text.)

12:34 Q. (By Mr. Schwartz) In your opinion, do you think you answered the question?

6 A. Yes, sir.

7 Q. I beg to differ. And let me go
8 through the question. The question asks
9 whether your extensive experience in
10 administering group health insurance plans
11 qualifies you to criticize the damages model.
12 And your answer was that you're qualified to
13 comment on certain features of the model.

14 A. Okay. So I get -- yes, certain
15 features of the model.

16 Q. You are qualified by your
17 experience in administering group health
18 insurance plans to criticize certain features
19 of the model?

20 A. That's correct.

21 Q. And specifically the material
22 inputted into the model?

23 A. Yes, sir. Which is not, as I
24 understand it, commenting on the model in and
25 of itself.

12:35 1 Q. I thought you said earlier, in essence, that what goes into the model affects what comes out of the model, or the result.

2 A. That's my understanding, that it would impact the result.

12:35 3 Q. So if you're going to be commenting and criticizing certain features of the input, how does that not affect the model -- the integrity of the model?

12:35 4 A. I think it does. So I guess I'm commenting on certain features of the model.

5 Q. You're criticizing the entire model.

6 A. Yes. Criticizing.

12:36 7 Q. The entire model.

8 A. No, I'm not criticizing the whole model. Because I guess what I'm saying is, that assuming bad numbers were inputted, then they may have gone through the right process to calculate the future numbers if that had been the right, correct inputs. The model itself ran -- could have ran correctly as it relates to the model and the other assumptions that they made. It's just the input data is flawed and is overstated, and so therefore, I

12:36 9

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12:36 1 feel that the end result is overstated.

2 Q. The machinery or the mechanism is
3 intact and in place and you don't criticize
4 that?

12:36 5 A. I'm not qualified to criticize
6 that, the process or the --

7 Q. The mechanism.

8 A. Right. The mechanism.

9 Q. You're criticizing the material
12:37 10 that's going through the model?

11 A. That's right. That's being input
12 into the model. That's correct.

13 Q. And you're criticizing what's
14 coming out of the model?

12:37 15 A. Yes, sir.

16 Q. The end product.

17 A. The end product.

18 Q. And you only partially understand
19 the mechanism, the model itself?

12:37 20 A. That's correct. I think I said I
21 had a general understanding of the model.

22 MR. SCHWARTZ: Let's stop
23 there for lunch.

24 THE VIDEOGRAPHER: We're off
12:37 25 the record.

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47

1

(A recess was taken.)

2

THE VIDEOGRAPHER: We're on

3

the record.

4

Q. (By Mr. Schwartz) Mr. Cosby, did

13:52

5

you have a nice lunch?

6

A. Yes, I did.

7

Q. Did you get to talk a little bit

8

about your testimony?

9

A. Just briefly.

13:52

10

Q. Less and less, I'll bet, as the

11

day goes on.

12

A. Yeah.

13

Q. Anything that you have spoken of

14

earlier or responded to that you need to

13:52

15

change now or comment on in any way?

16

A. No, sir.

17

Q. All right. You still have that

18

Exhibit 1 in front of you?

19

A. Yes.

13:52

20

Q. Let's go ahead and look at that.

21

And if you'll turn to your initial

22

disclosure. We were talking about the second

23

paragraph. Tell me what UGIP is.

24

A. That is the Uniform Group

53

25

Insurance Program.

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13:53 1 Q. And what do you actually know
2 about the Uniform Group Insurance Program?

13:53 3 A. That is the program that covers
4 the majority of the employees in the State of
5 Texas for healthcare. In addition, it covers
6 a number of the junior and senior college
7 employees, in addition to that, with the
8 exception of the University of Texas System
9 employees and the Texas A&M University System
10 employees.

11 Q. How does the healthcare of these
12 universities relate to Medicaid?

13 A. I don't know.

14 Q. Why is it important for us to be
13:54 15 talking about the ERS or the University of
16 Texas or A&M or Tech or anyplace else?

17 A. My understanding of it is, is that
18 those numbers were used in developing or
19 projecting some numbers relating to
13:54 20 smoking-related costs, that those health costs
21 or health premiums were used in projecting.

22 Q. Well, number one, where did you
23 get that understanding from?

24 A. From discussions with the legal
13:55 25 counsel on our side and from reading or

51716 9735

55 1 reviewing the reports that were prepared by
2 Vincent Miller and Wendy Max.

3 Q. And number two, what is it that
4 you actually know about the -- those three or
13:55 5 four different systems, the ERS, U.T., Tech,
6 or A&M? I know you were at Tech, so you're
7 infinitely familiar with their healthcare
8 system.

9 A. Yes. Very familiar with their --
13:55 10 the benefits and the cost and the items that
11 relate to healthcare for both Texas Tech and
12 for the ERS, the UGIP plan, on behalf of
13 serving on that committee and being a
14 participant under that plan, pretty familiar
13:56 15 with what the coverage is and how that process
16 worked in that regard. And on a more general
17 basis, are familiar with the Texas A&M and the
18 University of Texas systems and, in general,
19 understand how their health plans worked, how
13:56 20 the appropriations process -- how those monies
21 get transferred, what comprises those, the
22 various funding sources, et cetera.

23 Q. And again, in this initial
24 disclosure, you have down here that had Texas
25 Tech not joined UGIP, Tech's healthcare

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13:56 1 insurance costs would have been lower; is that
2 a fair statement?

3 A. Yes.

4 Q. And that's what it says on your
13:57 5 initial disclosure?

6 A. Yes, sir.

7 Q. Do you want to explain that for
8 me, please?

9 A. Sure. We, as I indicated
13:57 10 earlier -- we being Texas Tech University --
11 had gone into a self-insured plan, in addition
12 to that had negotiated some preferred provider
13 arrangement agreements with two of the three
14 major hospitals as it relates to inpatient
13:57 15 care, primarily, of our employees and their
16 dependents. And we had developed -- we were
17 implementing, you know, managed care, and
18 during that same time period the UGIP plan had
19 not gone to that level yet of managed care and
13:57 20 felt like that we had more flexibility and to
21 some extent had more leverage because of the
22 size of the university in Lubbock and with
23 nearly all of our employees right there in
24 that location, had the ability to develop and
13:58 25 design and implement a plan that we felt like

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13:58 1 would be more cost effective than going into
2 the rather large UGIP plan.

3 Q. A self-insured type plan?

4 A. Theirs or ours?

13:58 5 Q. Yours.

6 A. Ours is, yes, self-insured.

7 Q. That's what you think That Tech
8 should have gone to?

9 A. Yes, and did, during that time
13:58 10 period. And we should have remained separate,
11 was my opinion.

12 Q. Well, you were at Tech at that
13 time, were you not?

14 A. Yes, sir.

13:58 15 Q. And did you openly oppose joining
16 the UGIP?

17 A. Yes, sir. My -- my report to the
18 board of regents was to that extent, that I
19 felt like it was better for us to stay
13:59 20 independent. There was a split vote at the
21 board level, but the majority did recommend
22 joining the statewide plan.

23 Q. Is your report listed on these
24 documents that form in whole or in part your
13:59 25 opinions that you're giving here today?

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13:59 1 A. The report?

2 Q. Yes, sir.

3 A. You mean -- which report? My

4 report to the board?

13:59 5 Q. Yes, sir.

6 A. No.

7 Q. Did you review it in any way to

8 formulate your opinions?

9 A. No. Did I re-review it? No, I

13:59 10 did not.

11 Q. Did you draw back in your mind --

12 A. Yes, sir.

13 Q. -- upon the information in that

14 report?

13:59 15 A. Yes, sir.

16 Q. Did it play a significant part in

17 the formalization of your opinions?

18 A. My memory?

19 Q. Yes, sir, about that report.

13:59 20 A. Yes.

21 Q. Have you given the report to the

22 lawyers for the tobacco industry?

23 A. No, sir.

24 Q. Have you even told them about it?

14:00 25 A. We discussed Tech's joining the

51716 9739

14:00 1 UGIP and that process. We did discuss that.

2 Q. But did you tell them that you
3 actually wrote a report against the joining of
4 UGIP?

14:00 5 A. And I really -- I guess write a
6 report, I reported to the board. Probably
7 more of it was verbal than in writing, even
8 though we had a board -- what we call a board
9 item or a board motion, if you will, with
14:00 10 background information. It would have been
11 incorporated into that.

12 Q. Well, let's talk --

13 A. It's not really a separate report
14 in and of itself.

14:00 15 Q. There was a written document that
16 you referred to as a report?

17 A. Yes.

18 Q. How many pages was it?

19 A. Probably two to three pages.

14:00 20 Q. And from the best of your
21 recollection, not guessing, not speculating,
22 tell me what it said.

23 A. Okay. It basically said --
24 outlined where -- it was a history of where
25 Texas Tech had been as it related to

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14:01 1 healthcare, also a summary of the State
2 funding for health insurance for employees and
3 how that process worked. It discussed that
4 the legislature had provided an opportunity
14:01 5 that the University of Houston system and the
6 Texas Tech system had an option to either stay
7 independent or to go into the statewide plan.

8 It also covered the fact there was
9 an employee/faculty joint committee that
14:01 10 reviewed the -- this decision. Their input
11 was to join the statewide plan. And included
12 in that report was my input that I thought it
13 was better if we stayed separate.

14 Q. And what reasons did you give for
14:02 15 not wanting Tech to go into the plan?

16 A. I thought that we could have a
17 more cost effective and a more responsive,
18 flexible plan by staying on our own, i.e.,
19 have more control of our own destiny, if you
14:02 20 will, as a part of a separate deal rather than
21 being a part of the huge statewide health
22 plan.

23 Q. And you came up with this
24 recommendation based on your training,
14:02 25 education, and experience as a BBA with an

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02 1 accounting degree and a CPA?

2 A. Well, I guess primarily as it
3 relates to the experience that I had had both
4 with health plans during the '80s and in the
14:02 5 last -- in the two-year process prior to this
6 time period, Tech's experience in discussions
7 with the consultants that helped Tech
8 establish and set up a plan.

9 Q. What information or materials or
14:03 10 resources do you consider to have been
11 authoritative that you used in formulating
12 that decision and making that recommendation?

13 A. We reviewed the descriptions, the
14 plans themselves, both the UGIP plan and Texas
14:03 15 Tech's plan. We also reviewed the financial
16 results. At the time that we were reviewing
17 this, we had been self-insured about a year
18 and a half. In total, Tech was insured for
19 two years, but the decision to join or not to
14:03 20 join, you know, had a lead time on it, if you
21 will. So we reviewed the financial results
22 extensively of that.

23 Q. What years were those two years?

24 A. The two years, they were fiscal
14:04 25 year '91 and fiscal '92.

14:04 1 Q. Was there anything in the global
2 economy or in the local economy that in your
3 opinion affected the numbers in the years '91
4 or '92 that may have made them less than what
14:04 5 you thought they should be or greater than
6 what you thought they should be?

7 A. I guess as it relates to an
8 overall economy, healthcare in general was
9 escalating during that time period. And so I
14:04 10 guess that would have impacted our numbers, as
11 I felt like it was basically impacting
12 healthcare numbers nationwide. I don't know
13 about globally, but at least nationwide.

14 Q. Well, why was there a move to move
14:04 15 or change from self-insured to the UGIP plan?

16 A. My understanding of it was that a
17 number of the smaller universities were having
18 difficulty managing their healthcare plans.
19 Either they were too small, they were
14:05 20 inefficient, they were in areas that they
21 could not negotiate significant managed care
22 agreements, and so I think it was the primary
23 interest of those smaller plans to come up
24 with a better solution, if you will, for
14:05 25 healthcare. And in that process, all the

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05 1 smaller institutions were put into the Uniform
2 Group Insurance Program.

3 Q. How many plans stayed -- I'm
4 sorry. How many of these colleges and
14:05 5 universities stayed self-insured and how many
6 went with the plan?

7 A. The only two systems that stayed
8 independent were the University of Texas and
9 Texas A&M systems, once again, so that's a
14:06 10 number of separate institutions. The

11 University of Texas has quite a few across the
12 state, I think, as you're probably familiar.

13 Those are the only two that stayed in -- I
14 mean, that stayed independent or had separate
14:06 15 plans. And all the rest of them, Tech, and
16 also the University of Houston, both opted for
17 the statewide plan -- joining the statewide
18 plan.

19 Q. Have you made any study of the
14:06 20 healthcare plans in place at U.T. and A&M and
21 compared them to the other universities in the
22 state who are on the UGIP type plan?

23 A. I have not done any comparison
24 since the early '90s. During that time
06 25 period, that is one of the things that we

14:06 1 looked at in our decision-making process, is
2 what types of plans were being offered by
3 other major universities in the state.

4 Q. And at that point in time, when
14:07 5 you were making that comparison, had all of
6 these other universities gone into the plan or
7 adopted the plan?

8 A. The ones that we looked at
9 primarily were Houston, Texas, and A&M. Those
14:07 10 are the larger universities within the state.
11 And we've already talked about which ones went
12 in and which ones didn't.

13 Q. But you have general knowledge and
14 understanding about which of the universities
14:07 15 went into the UGIP plan?

16 A. Yes.

17 Q. Had that happened before Tech was
18 having to make their own decision?

19 A. No, it had not. The legislation
14:07 20 provided for about -- it was passed in
21 early '91 -- or during the legislative session
22 in '91, but the entry date was about a year
23 and a half out, which was September 1st
24 of '92. In that regard, all of the smaller
14:08 25 institutions, as part of the original

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08 1 legislation, were more or less mandated that
 2 they would be joining the statewide plan, and
 3 then the only two people -- two institutions
 4 that had options were the University of
 14:08 5 Houston and us. And we had to determine
 6 whether we were going to join or not, I
 7 believe, by April 30th of 1992. And then once
 8 we made that decision, then all of the people
 9 that were going in, or all the institutions
 14:08 10 that were going in, all went in at the same
 11 time, i.e., 9/1/92. So the other institutions
 12 were not in UGIP at the time we were doing
 13 this comparison.

14 Q. What factors, independently of the
 14:08 15 fact that there was a deadline, but what
 16 factors are responsible for Tech going into
 17 the plan?

18 A. What do you mean? What factors

19 Q. Costs, efficiency?

14:09 20 A. Yeah.

21 Q. Things like that?

22 A. Cost of -- you know, the cost of
 23 the various -- the plans as they would be, the
 24 anticipated service level to our employees,
 09 25 the flexibility of those plans to the extent

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14:09 1 that we get into an area that is maybe not
2 working well for our employees, the ability to
3 modify that process or procedure or fine tune
4 that. Those types of factors are the things
14:09 5 that we looked at in determining that.

6 Q. With regard to the costs, when you
7 say healthcare costs -- and the objective is
8 to lower the healthcare costs, right?

9 A. Normally, yeah.

14:10 10 Q. Well, that's what you were trying
11 to do, wasn't it?

12 A. And still provide a given level of
13 benefits to our employees.

14 Q. Is it possible, in your opinion,
14:10 15 to lower the costs and keep the services the
16 same?

17 A. I think there has been some effort
18 made on that as it relates to some of the
19 managed care efforts that have gone on, maybe
14:10 20 structuring the way the -- and this is on
21 their side -- I think the way healthcare is
22 delivered to the marketplace. I think they've
23 made some improvements in that regard. So I
24 think there is some things that can be done
14:10 25 within that context without reducing the

10 1 quality or amount of healthcare that's
2 available.

3 Q. In 1991 and 1992, was that
4 possible?

14:11 5 A. You know, I think -- yes, I think
6 it was.

7 Q. Well, we had -- you've testified
8 we had escalating healthcare costs.

9 A. Yes.

14:11 10 Q. And you're trying to keep the
11 services the same.

12 A. Yes, sir.

13 Q. And you're trying to reduce
14 costs.

14:11 15 A. Yes.

16 Q. Now, you're the accountant. You
17 tell me how you figure that one out.

18 A. Well --

19 Q. How do you make that work?

14:11 20 A. That is -- you know, as I
21 indicated, for Texas Tech, one of the things
22 we did was, you know, went out and bid our
23 hospital inpatient care business for our
24 plans. And based on that, we went into a
25 preferred provider agreement with two of the

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14:11 1 hospitals in Lubbock where they gave us -- for
2 us saying that our employees would need to go
3 to those facilities, gave us significant
4 discounts to our plan in return for that. So
14:12 5 we felt like because there was adequate
6 capacity within both of those hospitals to
7 handle our number of employees on an inpatient
8 basis, that we were able to satisfy the needs
9 of our employees and still reduce costs.

14:12 10 Our intent was, was to go forward
11 and go into arrangements with doctors as a
12 second step in that process. Hospital costs
13 made up about 50 percent of our claims cost
14 during that time period, inpatient hospital
14:12 15 cost, and doctors were going to be the next
16 step in that process, but because of this
17 other activity and the possibility of joining
18 the statewide plan, we delayed that until
19 after the decision was made on whether we were
14:12 20 going to join the statewide plan, and
21 ultimately we never went through with that
22 because the decision was to go into the
23 statewide plan.

24 Q. Who did you consult with -- I
14:13 25 already asked you what did you consult that

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13 1 you considered authoritative. But who did you
2 consult with in this decision for the
3 university to go with the plan?

14:13 4 A. With the plan? Consulted with our
5 third-party administrator.

6 Q. Who is that?

7 A. Alta, A-l-t-a. I think it's Alta,
8 Incorporated, I believe. They were a Salt
9 Lake City, Utah based company, but the office
14:13 10 that we were using was the Houston branch or
11 office of that particular company in that
12 regard.

13 In addition to that, I talked to
14 and discussed with the Blue Cross/Blue Shield
14:13 15 officials about their thoughts and input.
16 They were the entity or company managing or
17 assisting with the UGIP plan, kind of -- they
18 were helping them in that process. In
19 addition to that, contacts that I had, you
14:14 20 know, healthcare-related individuals that ran
21 either hospitals or doctors' groups.

22 I contacted the individual at
23 Peat, Marwick that helped us with the
24 self-insurance to get his viewpoint, because
14:14 25 he's someone that worked in the healthcare

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1 consulting area on a daily basis. And those
2 were the people that I talked to.

3 Q. In either the materials that you
4 referred to which you felt were authoritative
14:14 5 or these people who you consulted prior to
6 your making recommendation to the board, did
7 you break out the different types of illnesses
8 and the costs associated with those illnesses
9 in trying to arrive at your answer, which way
14:15 10 would be better for the university?

11 A. No, I don't believe we did any --
12 any claims analysis by type during that
13 process. We reviewed the overall level of
14 claims, if you will. We also reviewed the
14:15 15 administrative cost. As I indicated, we had a
16 third-party administrator that processed all
17 our claims. We did not do that in-house.

18 In addition to that, we did --
19 self-insurance is somewhat of a misnomer
14:15 20 because we did purchase both specific and
21 aggregate insurance to protect the university
22 or to minimize the exposure that we were
23 exposing ourselves to in that process. And we
24 looked at all of those factors in trying to
14:16 25 determine what it is, but I am not aware that

14:16 1 we -- or do not remember if we did look at the
2 types of claims.

3 Q. Well, you would agree with me that
4 there are healthcare costs associated with
14:16 5 smoking-related illnesses.

6 A. I think there is.

7 Q. Just like there are healthcare
8 costs associated with recreational activities?

9 A. Could be. Yeah. Injuries.

14:16 10 Q. Or occupational endeavors?

11 A. Uh-huh.

12 Q. Right?

13 A. I think so.

14 Q. Did you compare any of the
14:16 15 smoking-related health costs under the UGIP
16 plan and under another plan separate and apart
17 or different from UGIP?

18 A. I am not aware of reviewing,
19 quote, unquote, health-related costs as a part
14:17 20 of UGIP. I was aware of the smoking -- there
21 is an additional premium or surcharge that we
22 were aware of at the University of Texas as a
23 part of their plan and was aware of that
24 particular feature in having an additional
14:17 25 charge to the employee for premiums if they

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14:17 1 smoked.

2 Q. If successful in accomplishing the
3 goal that you wanted to accomplish, which was,
4 in part, lowering healthcare costs, is it your
14:17 5 testimony and opinion that you would have also
6 lowered the smoking-related healthcare costs?

7 A. I would hope that we had --
8 would. All of those, you know, we tried -- we
9 bid our processing, our administration, you
14:18 10 know, lots of things that we did in trying to
11 reduce all types of cost.

12 Q. The next sentence in this third
13 paragraph says, "Mr. Cosby is also expected to
14 testify that Texas Tech's actual healthcare
14:18 15 costs were often less than the healthcare
16 premiums appropriated by the State."

17 A. Yes, sir.

18 Q. I read that correctly, did I not?

19 A. Yes, sir.

14:18 20 Q. What does that mean?

21 A. What that basically means is, is
22 that the premium amounts that were allocated
23 or appropriated to Texas Tech from the state
24 legislature was a comparable amount to what
14:18 25 was given to the UGIP, or given to ERS for

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19 1 UGIP for healthcare, and so it was based more
2 on their cost structure than on ours. And the
3 statement here is, is that -- that Tech --
4 that Tech's actual healthcare costs were less
14:19 5 than that, than what was appropriated or
6 transferred.

7 Q. How many members were on the board
8 at Tech that you made your report to?

9 A. There was nine members of the
14:19 10 board. Board of regents is what it's called.

11 Q. And those are all voting members?

12 A. Yes, sir.

13 Q. Do you recall what the vote was on
14 whether to join UGIP or not?

14:19 15 A. I am not certain. I believe it
16 was five to two. I believe not all of the
17 regents were in attendance at that particular
18 meeting.

19 Q. It was a well-publicized meeting
14:19 20 among them?

21 A. Oh, yeah. It's the -- yeah.
22 There's a posting requirement and adequate
23 notification, et cetera, but it's not -- it's
24 probably more unusual for all of them to have
20 25 been at a meeting than to have one or two

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14:20 1 absences.

2 Q. Who were the board members at that
3 time, if you remember?

4 A. Ooh. Memory question. The board
14:20 5 members were John Sims.

6 Q. And who is John Sims?

7 A. He's an attorney in Lubbock,
8 Texas. Patsy Martin. She's a housewife, I
9 guess that's the best description, in Austin,
14:20 10 Texas.

11 Elizabeth Ward, and she lived in
12 Longview part of the time she was on the board
13 and lived in Houston the rest of the time she
14 was on the board.

14:20 15 An individual named Alan White.

16 Q. White?

17 A. White. Yeah. Just like black and
18 white. Alan is the chairman of Plains
19 National Bank in Lubbock, Texas, i.e., a
14:21 20 banker.

21 Ed Whitaker, I believe, was on
22 during that time period.

23 Q. Where is Mr. Whitaker from?

24 A. He is -- currently lives in
14:21 25 San Antonio, Texas. He's the chairman and

14:21 1 chief executive officer of Southwestern Bell.
2 In addition to that, we had Rocky
3 Johnson, who lived in Dallas. Traveled quite
4 a bit, but lived -- residence primarily in
14:21 5 Dallas. And he is the -- was the chairman and
6 CEO of GTE in that time period.

7 Beyond that, I can't remember who
8 was -- the board changes every two years, and
9 it's been several years.

14:22 10 Q. Were you there the evening or the
11 day that the vote was held?

12 A. Yes, sir.

13 Q. And do you remember which of the
14 members opposed the UGIP plan?

14:22 15 A. I believe Mr. Sims and Ms. Martin
16 were the two that voted against the plan.

17 Q. Do you remember which --

18 A. Under the --

19 Q. I'm sorry.

14:22 20 A. Against UGIP.

21 Q. Do you remember which two members
22 were not present that day?

23 A. I do not.

24 Q. Did you have any discussions --

14:22 25 well, first let me ask it this way: Were you

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14:22 1 surprised at the vote totals?

2 A. No, not really.

3 Q. You expected that it would be a
4 losing proposition to keep the university from
14:22 5 going with UGIP?

6 A. Based on my discussions --
7 Mr. Sims was the chairman of the finance
8 committee at that point in time and this
9 matter fell under their jurisdiction, and so

14:23 10 we had -- I had discussed it in advance with
11 Mr. Sims and was aware -- and he was aware
12 that -- that the -- based on his conversations
13 probably more than mine that it appeared that
14 a majority of the board preferred to go with
14:23 15 the statewide plan.

16 Q. What about Ms. Martin? Did you
17 talk to Ms. Martin about it?

18 A. I did not.

19 Q. Do you know what factors persuaded
14:23 20 them, the majority, to vote for the plan as
21 opposed to stay independent?

22 A. Yes. Well, I'm aware of what was
23 stated at the meeting or what the general
24 discussions were. It appeared to be based
14:23 25 on -- on kind of two primary things. One was,

14:23 1 as I indicated, there was an internal
2 committee made up of employees and faculty
3 members, and that particular committee
4 recommended that Tech join the statewide
14:24 5 plan. And so they relied on that and on, I
6 guess, kind of a risk adverse position, i.e.,
7 saying, "Let's let the State run it and handle
8 it. If it's better or worse, it doesn't
9 really matter that much directly to us." More
14:24 10 or less a problem avoidance approach, I guess,
11 if you will.

12 Q. Or risk management decision?

13 A. Yeah. True. Yeah? I mean, there
14 was less risk to us by moving to the statewide
14:24 15 plan.

16 Q. So these members who voted for the
17 plan were persuaded by the internal
18 committee's recommendations, and there was a
19 consensus that the risk management was better
14:25 20 with the State than with the university.

21 A. Well, I guess -- let me back up
22 and clarify what I mean by risk. Not
23 necessarily that they did a better job of risk
24 management in and of itself, but the way the
14:25 25 funding from the State came is -- let's use

14:25 1 the example of they're providing \$100 of --
2 since they're going to base our number off the
3 UGIP number, then if our cost got to the point
4 it was costing us \$110 a month, then Tech was
14:25 5 going to have to come up with that extra \$10 a
6 month out of other sources. And so there was
7 a cost avoidance concern there, whereas if you
8 went into the statewide plan and -- you might
9 not have a better plan, but you knew you
14:25 10 weren't going to have a negative cost impact
11 because whatever the statewide rates were,
12 that's what they were going to appropriate for
13 our employees.

14 Q. So would it be fair to say that it
14:26 15 was Tech's economic decision?

16 A. Yeah. There was an economic part
17 of that, but I guess it related to a cost
18 avoidance answer rather than an economic -- to
19 me, the more normal economic decision is this
14:26 20 one is cheaper than that one, and that wasn't
21 necessarily the discussion. Do you see what
22 I'm saying?

23 Q. I do. And let me make sure we're
24 on the same wavelength. I'm being a little
14:26 25 repetitive, but I want to make sure I

26 1 understand, that these board members who went
2 with the vote for the plan were, number one,
3 going on what the internal committee's
4 recommendation was and what Tech's own -- I
14:26 5 guess for the lack of a better word preference
6 was for cost avoidance or simply a matter or a
7 decision of dollars. They didn't want to be
8 paying for any part of the healthcare costs.

9 A. Beyond what the State was
14:27 10 appropriating.

11 Q. Right.

12 A. Right. That's correct. And, I
13 guess, one other thing that I should add is,
14 is that the president of the university was in
14:27 15 support of going to the statewide plan.

16 Q. Who was the

17 A. Dr. Robert Lawless.

18 Q. Wallace?

19 A. Lawless. Law, like lawless,
14:27 20 L-a-w-l-e-s-s.

21 Q. All right. So we've got the
22 internal committee's recommendation, Tech's
23 cost avoidance initiative or --

24 A. Uh-huh. That's fine.

27 25 Q. -- or reasons. And when we say

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14:27 1 Tech's, who are we talking about? The
2 president or the board or the university --

3 A. Tech's cost, you mean or --

4 Q. When we say it's Tech's economic
14:27 5 decision or Tech's --

6 A. Would be the university's --
7 university and Health Sciences Center. The
8 Texas Tech University Health Sciences Center
9 is also covered under our plan, and from a
14:28 10 legislative standpoint they're a separate
11 institution.

12 Q. And then thirdly, we have
13 President Lawless?

14 A. That's right. President Lawless.

14:28 15 Q. So we have three factors that
16 influenced the vote --

17 A. Yes.

18 Q. -- for the plan?

19 A. That's right. For joining the
14:28 20 statewide plan.

21 Q. In your opinion, are you
22 criticizing in any way the State of Texas,
23 meaning the governing body, meaning the three
24 branches of government -- do you know what
14:28 25 those are?

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28

1

A. Yes.

2

Q. Are you criticizing the State of

3

Texas for going with the plan?

4

A. You mean the State of Texas going

14:28

5

with the plan?

6

Q. No. Are you criticizing the State

7

of Texas for Texas Tech going with the plan?

8

A. No, I'm not criticizing the State

9

of Texas for that.

14:29

10

Q. What criticisms do you have of the

11

State of Texas with regard to any of your

12

opinions or any of your testimony?

13

A. In what specific regard?

14

Q. Well, you have an awareness of

14:29

15

what your opinions and your testimony is and

16

what it's going to be, right?

17

A. As it relates to these topics, is

18

what we're saying?

19

Q. All of them. All of them that

14:29

20

you've given to these lawyers who work for the

21

insurance -- tobacco industry, it's one and

22

the same, and your --

23

MR. MacRAE: Been fighting

24

the real bad guys for too long.

29

25

Q. (By Mr. Schwartz) Yes.

14:29 1 A. I don't have any real overall
2 criticisms of the State of Texas. My
3 testimony here relates to their calculations
4 in conjunction with this lawsuit. I have some
14:30 5 differences on that, but overall, I don't.

6 Q. All right. But you say in here,
7 and I've read in your opinions, that Tech's
8 actual healthcare costs were often -- I'm
9 sorry. That the -- had Tech not joined UGIP,
14:30 10 Tech's healthcare insurance costs would have
11 been lower.

12 A. Okay.

13 Q. Well, that's not the State's
14 fault, is it? It's not that the State didn't
14:30 15 do something, you're talking about a decision
16 that was made by the governing body at Tech.

17 A. That's correct. But that does not
18 necessarily mean you need to use those numbers
19 in calculating something else.

14:30 20 Q. I'm not talking about numbers.

21 A. Okay.

22 Q. I'm just merely talking about this
23 one statement in your opinion that you're
24 critical that Tech should not have joined
25 UGIP, and if it hadn't its insurance costs

31 1 would have been lower.

2 A. I believe that. I don't

3 necessarily -- I think you're making the

4 connotation that that's a criticism. I'm

14:31 5 making it more of a statement of fact --

6 Q. Well, let's --

7 A. -- that Tech's plan costs would

8 have been less. You know, that may have not

9 been the State's, you know, primary or sole

14:31 10 part of this. It might be easier for them to

11 have Tech as part of it -- of the statewide

12 plan for their benefit. I was speaking for

13 Texas Tech and its employees.

14 Q. Now, that's your opinion, and

14:31 15 you're entitled to that opinion.

16 A. (Witness nods.)

17 Q. My question is simply that the

18 State of Texas didn't do anything to make Tech

19 make that decision, it was the internal

14:32 20 decision at Tech by its nine board members?

21 A. Well, let's back up. Are we still

22 talking about the third paragraph?

23 Q. Yes, we are.

24 A. We were talking about the sentence

32 25 that says "Mr. Cosby is also expected to

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14:32 1 testify that Texas Tech's actual healthcare
2 costs were often less than the healthcare
3 premiums appropriated by the State."

14:32 4 Q. Well, we haven't gotten there
5 yet. We're just talking about that first
6 sentence. Texas --

7 A. I just -- okay. They were just
8 less. I was just making that statement.

9 Q. Okay. But I need to make sure
14:32 10 that the criticism or the fault for that is
11 not leveled against the State of Texas,
12 because the State of Texas didn't do anything
13 to make or to cause Tech to make that
14 decision. Tech made that decision. It was
14:32 15 totally internal, was it not?

16 A. The board of regents, correct.

17 Q. It was totally internal, right?

18 A. The board of regents made that
19 decision. The board of -- normally the people
14:33 20 that work out at Tech on a day-to-day basis
21 don't consider the board of regents to be
22 internal, to us.

23 Q. Okay. That's fair enough.

24 A. Because they're not our employees
14:33 25 and they're appointed by the Governor,

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1 et cetera, et cetera.

2 Q. That's fair enough?

3 A. But yes, our board did make that

4 decision whether to join or not.

14:33 5 Q. All right. Separate and apart

6 from the government of the State of Texas?

7 A. Yes.

8 Q. The Governor, the judiciary, or

9 the legislative branch?

14:33 10 A. That's right. Did not make that

11 decision.

12 Q. The next sentence that we've

13 talked about in part, that you're expected to

14 testify that Tech's actual healthcare costs

14:33 15 were often less than the healthcare premiums

16 appropriated by the State.

17 A. Yes, sir.

18 Q. Okay. What does that mean? What

19 significance does it have?

14:33 20 A. Okay. The -- what it means to me

21 is, as indicated, the amounts that were

22 appropriated were more based on the Uniform

23 Group Insurance Program rates than they were

24 on looking at Tech's plan in and of itself.

25 They were appropriating and transferring those

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14:34 1 dollars based on those amounts to Texas Tech.
2 And during the two-year time period that Tech
3 was self-insured, i.e., 9/1/90 through
4 8/31/92, the transfers of the premiums, the
14:34 5 contributions into that plan ended up being
6 about five million more than the expenses,
7 claimed costs, administrative cost,
8 et cetera. And so therefore, my statement
9 here that Tech's actual healthcare costs were
14:34 10 less than the premiums.

11 Q. That's good, isn't it?

12 A. Yes, sir.

13 Q. I mean, don't we want to see that
14 happen?

14:34 15 A. Yes.

16 Q. Okay. So the next part of your
17 sentence is, "The State undertook no effort to
18 recoup any surplus in premiums."

19 A. Okay.

14:35 20 Q. Well, what did you do towards that
21 end? Did you lobby the government? Did you
22 lobby the State of Texas?

23 A. No, sir.

14:35 24 Q. What did you do at Tech towards
25 that end?

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14:35 1 A. We, you know, made everyone aware,
2 you know, of where we were as it relates to
3 funding and the amount of reserves that were
4 being built up in our plan, about options as
14:35 5 far as reducing costs or adding benefits or
6 the other things that might impact that.
7 And --

8 Q. Well, how does this relate to the
9 State's damages?

14:35 10 A. To what? The State's --

11 Q. How does this relate to the
12 State's damages in this case, that the State
13 undertook no effort to recoup any surplus in
14 premiums?

14:35 15 A. I guess if there were dollars out
16 there that should have been transferred in
17 or -- then ended up being made a part of UGIP,
18 then it would have had a -- it would have
19 reduced the estimate of what I considered to
14:36 20 be the cost of the insurance plan.

21 In addition to that, my
22 understanding based on the reading I have of
23 both the models, that they drove those off of
24 premiums versus off of the expenses. They
14:36 25 just transferred and said, well, once the

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14:36 1 premium's transferred over there, that's the
2 cost, quote, unquote, and that may or may not
3 be true. To the extent reserves or balances
4 are being built up within the plan, then what
14:36 5 comes in is not necessarily equal to what went
6 out. And if it was a cost determination, then
7 it should have been based -- in my opinion,
8 based off of what the cost numbers were, not
9 what the revenues were into the plan.

14:37 10 Q. It's an interesting opinion that
11 you have here, and it really intrigues me in a
12 number of ways, because I find you being very
13 critical again of this damage model that we
14 have. You do know that the damage model takes
14:37 15 into account smoking-related healthcare costs?

16 A. They try to estimate
17 smoking-related healthcare costs.

18 Q. How is that different from what I
19 just said?

14:37 20 A. I don't know.

21 Q. It isn't. They take into account
22 estimated or -- smoking-related healthcare
23 costs?

24 A. But they're basing that
14:37 25 understanding based off of premiums that we

37 1 just discussed, may be -- may not equal or
2 don't equal the healthcare claims costs.

3 Q. Are you sure that the
4 smoking-related healthcare costs are derived
14:38 5 solely from premium? Are you sure of that?

6 A. Reasonably comfortable with that
7 position.

8 Q. All right. Well, this is -- this
9 is the same as trial.

14:38 10 A. That's fine.

11 Q. Because -- you need to make sure
12 and --

13 A. Sure.

14 Q. -- that's why I'm asking you.

14:38 15 It's not like we can make one guess here or
16 make an informed guess or something like that
17 here and then change it at trial. I need to
18 know if you are certain of that or not, and if
19 that's a statement that you're willing to make
14:38 20 to these ladies and gentlemen of the jury,
21 because you're going to be held to it.

22 A. Based on my reading of the two
23 models, they're based on premiums transferred
24 or allocated or appropriated by the
38 25 legislature into either UGIP or the separate

51716 9770

14:38 1 University System's health plans, based off of
2 premiums, i.e., money transferred into there
3 is what -- and I believe that.

4 Q. You believe that?

14:39 5 A. Yes, sir.

6 Q. Could you hand me that question
7 that you wrote out, please?

8 A. Sure.

9 Q. I'm going to mark that as
14:39 10 Exhibit 2 just to keep these separate.

11 A. That's an impressive exhibit, by
12 the way.

13 Q. It is.

14 MR. SCHWARTZ: Cosby 2.

14:39 15 MS. SAVARESE: Now that
16 you're marking it, Bob, would you mind just
17 explaining for the record what that exhibit is
18 or ask the witness to do it.

19 Q. (By Mr. Schwartz) You can do
14:39 20 that, Mr. Cosby. If you will explain what
21 Exhibit 2 is, because it's been a while since
22 we did that.

23 (Deposition Exhibit 2
24 was marked.)

14:39 25 A. This was a question that you had

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14:40 1 indicated you did not think I had answered,
2 and so we asked the court reporter to read
3 that question back to us and you -- I believe
4 you made a copy -- I mean, a handwritten copy
14:40 5 of the question and indicated that I could
6 also if I wanted to.

7 So, in trying to add to the
8 clarification, I did copy or detail out the
9 question so I could understand it better, and
14:40 10 then we discussed it further and decided that
11 my answer was adequate or at least responded
12 to the question.

13 Q. All right. I'm going to give you
14 another completely blank piece of paper.

14:40 15 A. Okay.

16 Q. This is -- this might take some
17 time for you to do it, but I'm willing to take
18 the time. I want you to put on paper in your
19 own words what you understand the damage model
14:41 20 to be for the State of Texas and how it
21 works.

22 MS. SAVARESE: Before
23 Mr. Cosby answers that question --

24 MR. SCHWARTZ: There are no
14:41 25 objections.

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14:41 1 MS. SAVARESE: I'm not
2 objecting.

3 MR. SCHWARTZ: I'm not going
4 to stop. That's the whole purpose for no
14:41 5 objections. The man has said that he has --
6 he's made a statement on the record, and I
7 want him to show me how it is that he can make
8 the statement. I want to see what his
9 knowledge is of the damage model.

14:41 10 MS. SAVARESE: I understand
11 that's what you want. But we are at a
12 deposition where you are to ask him questions
13 orally and the witness is obligated to answer
14 your questions, but the witness is under no
14:41 15 obligation to write down anything. He
16 cooperated with you once when he wrote down a
17 question --

18 MR. SCHWARTZ: Is that an
19 objection?

14:41 20 MR. MacRAE: I think you
21 should let her finish it.

22 MR. SCHWARTZ: I'm not. I
23 don't have to. And you don't know anything.
24 You be quiet.

14:41 25 MR. MacRAE: I think she's

51716 9773

41 1 entitled to finish what she said.

2 MR. SCHWARTZ: There are no
3 objections in this deposition.

4 MR. MacRAE: I'm not
5 objecting.

6 MR. SCHWARTZ: There are no
7 interruptions in this deposition making a --

8 MR. MacRAE: I'm just making
9 a statement as you did. I think she's
10 entitled to finish it.

11 MR. SCHWARTZ: She's not. On
12 the record we're going for the hotline hearing
13 and you can tell the judge. I asked him a
14 question, I asked him to do something. It's
14:42 15 right in response to a statement that he made
16 and he's got to do it. You can make your
17 objection at trial for any reason you want.
18 As respectfully as I can be, those are the
19 rules of this circuit and this district. So
14:42 20 are you going to let him do it?

21 MS. SAVARESE: It's not a
22 matter of letting him do it. I think that
23 you're abusing this deposition process, so --

24 MR. SCHWARTZ: Then let's
42 25 take it up with the judge.

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14:42 1

MS. SAVARESE: That will be fine.

2

3

4

MR. MacRAE: Let's take a short break before we do that.

14:42 5

MR. SCHWARTZ: No. Let's take it up with the judge. She wants to take it up with the judge --

6

7

MR. MacRAE: We'll take it up, but after a break.

10

11

MR. SCHWARTZ: There's no reason to take a break.

12

13

MR. MacRAE: We should have time to confer, Mr. Schwartz.

14

14:42 15

MR. SCHWARTZ: I don't want -- you two can confer. I don't want the witness outside the room.

17

18

MR. MacRAE: I'm not going to confer with Mr. Cosby.

19

20

MR. SCHWARTZ: All right. MR. MacRAE: I want to take a break, though.

22

23

MR. SCHWARTZ: We'll sit right here.

24

14:42 25

MR. MacRAE: I would like Mr. Cosby to be able to leave the room while

51716 9775

43 1 we're outside the room. And we're not going
2 to talk to him.
3 MR. SCHWARTZ: We're not
4 going to talk to him either.
14:43 5 MS. SAVARESE: We're off the
6 record?
7 THE VIDEOGRAPHER: Do I go
8 off the record?
9 MR. SCHWARTZ: They've left
14:43 10 the room, so --
11 THE VIDEOGRAPHER: Off the
12 record.
13 (Off-the-record
14 discussion.)
14:43 15 THE VIDEOGRAPHER: We're on
16 the record.
17 MR. SCHWARTZ: We have put a
18 call in to Judge Radford on the hotline
19 numbers, both in Beaumont and in Texarkana,
14:53 20 and it appears that we got transferred -- we
21 left a message in Beaumont. It appears that
22 we got transferred from Texarkana to Beaumont
23 because the message or recording was the
24 same. So if, in fact, the judge does not hold
25 a hotline conference today, is it your

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14:53 1 agreement that you will produce the witness in
2 the event the judge says I'm entitled to make
3 that inquiry of the witness, for him to answer
4 those questions and do what it is I'm asking
14:53 5 him to do?

6 MS. SAVARESE: My agreement
7 is that if a judge in this matter rules that
8 Mr. Cosby has to respond to the single
9 question that you asked earlier, before our
14:54 10 dispute, then I will not object to Mr. Cosby
11 being asked that singular question at a later
12 date.

13 MR. SCHWARTZ: And that
14 singular question was for him to put in
14:54 15 writing -- and I handed him a blank piece of
16 paper which is going to be marked Exhibit 3,
17 wherever those stickers went. I asked him to
18 put on the piece of paper what he knew about
19 the damage model.

14:54 20 MS. SAVARESE: The record
21 will reflect what the question was.

22 MR. SCHWARTZ: Just so you
23 and I understand while we make this
24 agreement.

25 (Deposition Exhibit 3
was marked.)

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55

1

MR. SCHWARTZ: Cosby 3.

82:41

2

Okay. Let's --

3

MR. MIKHAIL: Are we on the

4

record?

14:55

5

MR. SCHWARTZ: Yes. Get our

6

witness.

7

MS. SAVARESE: Let's go off

8

the record and we'll go find him.

9

THE VIDEOGRAPHER: We're off

14:55

10

the record.

11

(Off-the-record
discussion.)

12

13

THE VIDEOGRAPHER: We're on

14

the record.

14:57

15

Q. (By Mr. Schwartz) -- Mr. Cosby, we

16

before that short recess, we were talking

17

about the State's damage model in this case,

18

right?

19

A. Yes.

14:58

20

Q. And my question to you was -- and

21

counsel would not let you answer the

22

question. The question was what did you know

23

about the model. Not what were your opinions,

24

but what did you know. Is that your

58

25

understanding, that I asked you what did you

51716 9778

14:58 1 know about the model and asked you then to
2 write it?

3 A. And whether I was certain, I
4 believe, was the question.

5 Q. Right.

6 A. And I said I was reasonably
7 certain that those were based off of premiums
8 or transfers into the plan, not on the cost or
9 expenditures.

14:58 10 Q. And I asked you to put on paper
11 what you knew about the model; is that right?

12 A. Yes. That's correct.

13 Q. Well, why don't you tell me
14 verbally what you know about the model,
14:59 15 everything you know about the model. I
16 personally think it would be easier to write
17 it, but you can tell me verbally everything
18 you know about the model, one, two, three,
19 four, five.

14:59 20 A. Okay. I'll be glad to do that. A
21 couple of things I would like to say is I have
22 not been retained or asked to research that
23 specifically or in-depth, only in the context
24 that it relates to the areas that I have been
14:59 25 asked to comment on.

51716 9779

59 1 Q. Who told you to say that? 00:31

2 A. Nobody. 00:32

3 Q. Well, then why are you saying it? 00:33

4 Why do you feel a need to qualify your answer 00:34

14:59 5 with that? 00:35

6 A. Because I do not feel like, and as 00:36

7 far as I know, have not been engaged as an 00:37

8 expert witness on the model, quote, unquote, 00:38

9 so I have some concerns about, you know, where? 00:39

15:00 10 this particular line of questions is headed as 00:40

11 it relates to my involvement in the model. 00:41

12 Q. Well, these preliminary opinions 00:42

13 that we have been talking about -- 00:43

14 A. Uh-huh. 00:44

15:00 15 Q. -- touch on various aspects of the 00:45

16 model, right? 00:46

17 A. Okay. 00:47

18 Q. You have already testified that 00:48

19 you criticize the input -- 00:49

15:00 20 A. Yes, sir. 00:50

21 Q. -- and the output, but not 00:51

22 necessarily the mechanism -- 00:52

23 A. The process, that's right. 00:53

24 Q. All the process. And I want to 00:54

00:00 25 know what it is you know about the model. How 00:55

51716 9780

15:00 1 can --

2 A. Okay.

3 Q. -- you say that, number one, the
4 information put in is wrong, and, number two,
15:00 5 the information that comes out the other end
6 is wrong?

7 A. Okay. Based on -- I don't know
8 whether it's the overview or the footnotes in
9 both those reports, or models, whatever you
15:01 10 want to call them, actually reports of the
11 results out of the model is probably a better
12 description of them, relate to the fact that
13 they indicated they used the premiums or the
14 revenues transferred into ERS, I believe it's
15:01 15 Fund 973 within the controller's accounting
16 system, and/or transfers into the university
17 systems in determining the starting -- kind of
18 a starting place of that those were healthcare
19 costs. And then from those numbers -- well,
15:01 20 not actually from those numbers. The model,
21 you asked for whatever I knew about the
22 model.

23 The description within that, as I
24 understand it, is they took some -- Mr. Miller
15:02 25 and Wendy, whether that's a Mr. or Mrs., I

51716 9781

02 1 don't know, those two individuals I think 20:21
2 approached it slightly differently as it 2
3 relates to -- but they took some sort of 3
4 general data on smoking overall or what 4
15:02 5 percentage of the population smokes and then 40:11
6 interpolated that into some sort of percentage
7 of healthcare costs were smoking-related. And
8 then from that they applied some sort of
9 percentage or allocation to, once again, the
15:02 10 premiums or the revenues or the transfers into 40:11
11 those healthcare plans. Okay? As it relates 41
12 to the model, that's my understanding. 41
13 And then they take that 41
14 information and project forward as to what the 41
15:03 15 smoking-caused or related healthcare costs are 41
16 and have requested reimbursement from the 41
17 tobacco companies for that. 41
18 Q. Is that as detailed a depiction of 41
19 what you know about the plaintiff's damage 41
15:03 20 model -- 40:21
21 A. Yes, sir. 41
22 Q. That's as detailed as you can make 41
23 it? 41
24 A. Yes, sir. 41
15:03 25 Q. When you talk in this preliminary 41

15:03 1 disclosure that Texas Tech could have taken
2 certain steps to mitigate or eliminate what
3 the State contends are employee health benefit
4 costs attributable to smoking, number one,
15:04 5 you're not criticizing the State again, you're
6 just criticizing Texas Tech?

7 A. Yeah. Texas Tech.

8 Q. You're not saying that the State
9 failed to do something or didn't do something
15:04 10 it should have, because Texas Tech is the
11 entity that made these decisions, their board
12 of nine?

13 A. Yeah. I guess to the extent that
14 Texas Tech is a part of the State, there is
15:04 15 some comment about the State, because they're
16 considered State employees, et cetera,
17 et cetera. So I guess, to me, Texas Tech is a
18 subcomponent of the State of Texas, I think,
19 based on the way you're using the description
15:04 20 of the State of Texas.

21 Q. Well, tell me if the Governor, the
22 legislature, or the judiciary, or any agency
23 had any role in Tech's decisions with regard
24 to either the UGIP plan or any other of these
15:06 25 faults that you place on Tech.

51716 9783

05 1 A. I guess they would have had -- the
2 ERS would have had some involvement in that.
3 They were the primary -- I don't know whether
4 that's a State department or State agency,
15:05 5 would -- was the -- since 1992, anyway, was
6 the primary emphasis of what features the
7 plan -- the health plan would have or not
8 have, and they would have been the primary
9 sponsor or in control, if you will, as it
15:06 10 relates to whether any -- for example, a
11 smoking surcharge was to be implemented, they
12 were in the driver's seat and -- versus Texas
13 Tech separately.

14 Q. All right.

15:06 15 A. Other than indirect input or input
16 from the advisory committee that I was on,
17 there was no way for Tech to have a direct say
18 in how that was handled, how smoking-related
19 costs or smoking-related premiums were set.

15:06 20 Q. It's not your testimony that the
21 State government in Texas had anything to do,
22 per se, with Tech joining or not joining
23 UGIP. You've already said that.

24 A. That's correct.

06 25 Q. Or that -- did it have anything to

51716 9784

15:06 1 do with Tech taking or not taking steps to
2 mitigate or eliminate additional employee
3 health benefit costs attributable to smoking?

4 A. Prior to '92, they -- only
15:07 5 indirectly involved in that process.

6 Q. How?

7 A. Well, they did mandate or
8 legislate certain features of the plan that
9 were required to be included as it relates to
15:07 10 how you handle mental health, a number of
11 other rules and regulations relating to health
12 plan. They had an entity prior to '92 or a
13 council that was called the administrative
14 council. It was a part of the coordinating
15:07 15 board, a committee that came up under the
16 coordinating board, Texas Higher Education
17 coordinating board, and had some, you know,
18 influence or process in there as far as
19 telling us -- telling Texas Tech how to handle
15:07 20 our plan or certain features of it were set
21 out by that. Not specifically relating to
22 smoking, but there were a number of rules and
23 regulations in there -- in that particular
24 process.

15:08 25 Q. Well, the way in which you contend

51716 9785

1 that Tech, not the State, but Tech, could have
2 mitigated or eliminated what the State
3 contends in its damage model to be healthcare
4 costs attributable to smoking was by charging
15:08 5 an additional premium to smokers or by --
6 A. That's one of them, one of the
7 ways.
8 Q. Yeah. -- or by reducing the
9 benefits to smokers?
15:08 10 A. Correct.
11 Q. Now, is that generally done in
12 these big health insurance plans like UGIP?
13 A. I don't have any nationwide data.
14 I know that a surcharge is, as we discussed
15:09 15 earlier, like in life insurance, that a
16 surcharge relating to smokers and nonsmokers
17 is, I guess -- I was aware of that
18 differential. So I know there is some
19 features of those where plans or programs are
15:09 20 split between those two groups, and I was
21 aware of the University of Texas' program as
22 it relates to that. And we internally even
23 talked about that, among others, wellness type
24 programs, et cetera, as to what features we
25 might add or change, once again, to minimize

15:09 1 costs.

2 And so yes, I think Tech could
3 have taken steps. That's my opinion and I
4 feel very strongly about that, that they could
15:09 5 have taken some steps to reduce or mitigate
6 those costs.

7 Q. Under UGIP or before UGIP?

8 A. Both.

9 Q. And have you met with anybody with
15:10 10 UGIP to determine if that was even a
11 possibility, if they could even do something
12 like that? If -- in other words, if they
13 could vary the rates?

14 A. I don't remember us discussing
15:10 15 specifically varying the rates. I remember us
16 discussing, you know, what differentials
17 possibly could be added to the plan, and
18 smoking was one of them that was discussed
19 within the committee anyway. I don't think we
15:10 20 made any formal recommendation on it. And
21 talked in general about the difficulty of how
22 to implement that program, et cetera, how do
23 you monitor it, how do you police it, if you
24 will, those types of factors.

15:11 25 Q. What do you mean you made no

51716 9787

11 1 formal recommendation? Who made no formal
2 recommendation --

3 A. The group benefits advisory
4 committee. Not any that I'm aware of. They
15:11 5 may have made, you know, one prior to my
6 joining them or one subsequent to me leaving
7 them. I haven't spent any time reviewing the
8 documents.

9 Q. But who --

15:11 10 A. But not during the time period I
11 was there.

12 Q. Who did the group benefits
13 advisory committee not make a recommendation
14 to?

15:11 15 A. The board of trustees of ERS.

16 Q. With regard to?

17 A. Smoking.

18 Q. Specifically?

19 A. Specifically. We did make some
15:11 20 recommendations about other things.

21 Q. Let's stick to the smoking part.
22 You say that they did not make a
23 recommendation to the board of trustees of
24 ERS.

11 25 A. Not that I'm aware of.

51716 9788

15:11 1 Q. Regarding what aspect of smoking
2 and UGIP plan?

3 A. The aspect of a smoking surcharge.

4 Q. Do you know why they didn't?

15:12 5 A. No, sir.

6 Q. How else did they fail? What else
7 should they have done?

8 A. Related to smoking?

9 Q. Yes, sir. You said smoking
15:12 10 surcharge, and you also have reducing the
11 benefits to smokers. How would they have
12 effected reducing the benefits of smokers?
13 What recommendation would they have made to
14 the trustees of ERS?

15:12 15 A. They could have made a
16 recommendation that would have said we would
17 like to -- or we feel like the plan should
18 only reimburse a certain percentage of those
19 costs, i.e., for example, most of the plan's
15:13 20 costs during that time period were reimbursed
21 like 80 percent after a deductible had been
22 met, and so you ended up with 80 percent paid
23 for by the plan and 20 percent by the
24 employee.

15:13 25 Q. Well, by --

51716 9789

13 1 A. You could have changed that
2 percentage as it relates to certain diseases
3 or other things, smoking-attributed type
4 problems, and maybe reimbursed those at
15:13 5 60 percent instead of 80 percent, i.e., plan
6 modification that would hopefully reduce the
7 cost or transfer some of those costs back to
8 the employee for that particular behavior.

9 Q. And when we're talking about an
15:13 10 employee, we're talking about a smoker
11 employee?

12 A. That's right. But -- i.e., we
13 could have made changes to the plan, the
14 recommended changes to the plan.

15:13 15 Q. Were you on the Group Benefits
16 Advisory Committee at Tech?

17 A. The Group Benefits Advisory
18 Committee was actually at the statewide
19 committee.

15:14 20 Q. Uh-huh.

21 A. And I was Tech's representative to
22 that. And there was an election process and I
23 was elected to that position.

24 Q. How many people were on that
15:14 25 committee?

15:14 1 A. For a time period there was about
2 15 to 17 people, and then it was expanded, and
3 I believe it had 27 members at the end.

4 Q. Twenty-seven members in '96?

15:14 5 A. Yeah. '95 or '96. Made up of
6 Higher Education and the large State
7 agencies: The highway department,
8 controller's office, et cetera. All the major
9 agencies all had a representative to that
15:15 10 committee.

11 Q. Were you at that time, while you
12 were Tech's representative on the statewide
13 committee, pushing for this committee to make
14 a recommendation to ERS that there should be a
15:15 15 smoking surcharge?

16 A. No, sir. I was not pushing that
17 during this time period.

18 Q. Did you advocate it?

19 A. We discussed it.

15:15 20 Q. Did you advocate it?

21 A. No.

22 Q. Did you advocate seeking a
23 reduction in benefits to smokers?

24 A. Once again, we discussed all of
15:15 25 those types of changes, but did not push any

15:15 1 one particular program over another.

2 Q. And you particularly didn't
3 advocate either one of those, smoking
4 surcharges or reduced benefits to smokers?

15:16 5 A. No, sir.

6 Q. Even though the subject being
7 investigated, if you will, by this committee
8 was reducing healthcare costs?

9 A. That's correct. I think smoking
15:16 10 is only one of many different risk factors
11 that impact the level and amount of healthcare
12 costs and probably is one of the smaller ones,
13 in my opinion. So I did not push that
14 particular item.

15:16 15 Q. Well, what other recommendations
16 during your tenure on this statewide committee
17 do you feel -- and this is related to reducing
18 healthcare costs -- do you feel the committee
19 failed to make to the board of trustees of
15:17 20 ERS?

21 A. Relating to healthcare costs?

22 Q. Yeah. Yes, sir.

23 A. Nothing really comes to mind. I
24 have not spent any time thinking about it.

15:17 25 Q. Well, here you have an opinion.

51716 9792

15:17 1 And we've already established that the fault
2 is on Tech, not the State, but then --

3 A. I'm not sure we've established
4 that, but go ahead.

15:17 5 Q. Well, we're going to continue to
6 reestablish it, I promise you, because it's
7 important to make reference to each one of
8 these opinions and make sure that we're
9 applying -- they're all connected and so

15:17 10 continually we're going to go back and repeat
11 those opinions, and the ground that we've
12 covered will probably continue to come up. Is
13 that a problem?

14 A. No.

15:18 15 Q. Okay.

16 A. As long as we all agree on what we
17 decide.

18 Q. Well, it's your testimony.

19 A. I hope so.

15:18 20 Q. Well, you're the one under oath.
21 And I'm just trying to make sure I've got it
22 straight --

23 A. Good.

24 Q. -- based on what you're telling

15:18 25 me. All right?

51716 9793

18 1 A. (Witness nods.)

2 Q. There's no question about what

3 we're doing here today, is there?

4 A. No, sir. Not in my mind.

15:18 5 Q. All right. That Tech -- first you

6 said that Tech could have done certain things,

7 and now you're really saying that it's the

8 statewide committee, the Group Benefits

9 Advisory Committee, that failed in two ways,

15:18 10 or at least two ways.

11 A. Both of those organizations at

12 different points in time did not do certain

13 things. That's correct.

14 Q. All right.

15:18 15 A. That they could have done. I'm

16 not saying they should have done, just could

17 have done.

18 Q. Well, what should they have done?

19 A. I don't know.

15:19 20 Q. Okay. Well, you said that, and I

21 need to make sure I wasn't leaving something

22 out.

23 A. I hear you.

24 Q. It's not that you have an opinion

19 25 about what they should have done, you just

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15:19 1 know what they could have done.

2 A. That's right.

3 Q. All right... And what period of
4 time are you referring to when you're talking
15:19 5 about the Group Benefits Advisory Committee?"

6 A. From 1992 forward.

7 Q. Through today?

8 A. Yeah. Or, basically through '96.

9 Q. And when we're talking about Tech,
15:19 10 are we excluding any particular years for any
11 particular reason?

12 A. Not really. I would say they were
13 primarily involved in healthcare in 1992 and
14 prior. Since then, as we just indicated, I
15:19 15 felt like that that responsibility fell
16 primarily, if not entirely, on ERS and that
17 group to make any changes or recommendations,
18 et cetera.

19 Q. Are you aware of any one of these
15:20 20 healthcare plans, big healthcare plans,
21 whether it's with Peat, Marwick or Jones, Day,
22 or any other company that you may have some
23 experience with, that imposes different
24 premium on different people in the plan for a
15:20 25 particular group?

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20 1 A. I read one of the depositions of
2 one of the other individuals.

3 Q. Who was that?

4 A. I believe it was Malloy,
5 M-a-l-l-o-y, I believe. He works for the
6 University of Texas. And I believe he
7 referenced the Kansas or the State of Kansas,
8 that they had a smoking premium or surcharge.

9 Q. Well, we're in Texas. I need to
15:21 10 know about Texas. So I probably unfairly made
11 that --

12 A. Yeah.

13 Q. What about in Texas? Are you
14 aware of any of these plans in Texas --

15:21 15 A. The University of Texas' system
16 that covers some 43,000 employees does have
17 that differential, and did have during this
18 time period. That's the largest plan that I'm
19 aware of. Probably one of the larger plans in
15:21 20 the state outside of UGIP.

21 Q. Any others?

22 A. Not that I'm specifically aware
23 of.

24 Q. The last paragraph in the -- not
21 25 the last one, it's the last opinion in this

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15:21 1 preliminary disclosure, it's really the third
2 paragraph from the bottom --

3 A. Okay.

4 Q. -- states, "Mr. Cosby is also
15:21 5 expected to testify about the University of
6 Texas and Texas A&M health insurance plans."
7 Is there -- we've talked about those in
8 generalities. Is there anything specific that
9 you want to tell me about with regard to the
15:22 10 University of Texas and Texas A&M health
11 insurance plans that we haven't already talked
12 about?

13 A. Not anything specific that I want
14 to tell you about.

15:22 15 Q. All right. What -- your opinions
16 embody what you've already spoken of?

17 A. I don't know whether it's
18 all-encompassing.

19 Q. Then tell me what is your opinion
15:22 20 with regard to -- what will you testify to
21 about the U.T. and Texas A&M health insurance
22 plans?

23 A. Awful broad question.

24 Q. Well, that's what it says.

15:22 25 "Mr. Cosby is also expected to testify about

22 1 the University of Texas and Texas A&M health
2 insurance plans." So --

3 A. I was planning to respond to
4 whatever questions --

15:23 5 Q. Well, here is how it works: The
6 people that hire you and put you on the stand
7 ask you questions so you can give your expert
8 testimony in behalf of their case, and I'm
9 here to find out what testimony you're going
10 to give.

11 A. Okay.

12 Q. So I need you to tell me what
13 opinions you have about the U.T. and Texas A&M
14 health insurance plans today. If you don't
15 have any, that's fine.

16 A. I have some --

17 Q. Okay. What are they?

18 A. -- in that regard. You know, one,
19 A&M did not implement the smoking-related
15:23 20 surcharge similar to the University of Texas.
21 I believe that to be a choice that they made
22 in that regard.

23 I don't know how this really ties
24 in, whether it's a comment on U.T.'s plan or
25 whether it's a comment on how that information

-15:24 1 was used. The U.T. plan covers other items
2 besides healthcare within their plan. They
3 have a dental plan that is a part of or buried
4 within their health plan that does not exist
15:24 5 in the UGIP-type plan. In addition to that,
6 they have larger amounts of insurance. They
7 have a \$10,000 life insurance program within
8 their plan. The statewide's is at 5,000.

9 Either one of those -- or neither
15:24 10 one of those relate to healthcare costs
11 directly. Either one of those relate to
12 healthcare cost. So there's kind of a mixture
13 of items in that premium in addition to costs
14 for administrative costs and other items that
15:24 15 are in those plans that don't relate directly
16 to smoking-related healthcare costs.

17 That's the main points I would
18 have. I may have others as we review the
19 information again or in greater detail.

15:25 20 Q. All right. You fault Tech when it
21 went to UGIP and it didn't charge a surcharge,
22 right?

23 A. Yes, sir.

24 Q. And you fault A&M as well? A&M is
15:25 25 with UGIP?

25 1 A. No. A&M is on their own.

2 Q. Well, which way do you want it?

3 Do you want to be with UGIP, or do you want to

4 be independent?

15:25 5 A. I would rather be independent.

6 Q. Well, you're critical of both.

7 Which one -- you've got two options. Right?

8 A. Yeah. But there's also the

9 University of Texas that's independent also.

15:26 10 That's an entirely separate plan.

11 Q. We haven't gotten to U.T.

12 A. I understand.

13 Q. We're talking about A&M and we're

14 talking about UGIP. I want to know --

15:26 15 A. Well, but to me, I guess I can be

16 critical of both of them without saying I want

17 to be in one or the other.

18 Q. Well, you could, but you've got to

19 be in one or the other, don't you?

15:26 20 A. Tech needs to provide healthcare

21 in some format.

22 Q. Yes. You have to. You don't have

23 really a choice not to be, do you? You have

24 to be in one of the plans.

26 25 A. Yeah. Unless you had your own

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-15:26 1 plan.

2 Q. Either independent or be in a
3 plan.

4 A. I would rather be independent. We
15:26 5 talked about that earlier.

6 Q. But you're criticizing A&M because
7 they don't have a surcharge, and they're
8 independent?

9 A. That's true. The independence
15:26 10 doesn't relate to how they run their plans.
11 mean, what features they have or design
12 features or benefit programs underneath that.
13 It's just I think the independent plan for
14 entities of that size. I don't necessarily
15:27 15 think it's right for every single
16 institution. If you have a small institution,
17 geographically remote, may very well -- might
18 be better off in the UGIP plan.

19 Q. The reason you like the
15:27 20 independent plan is because it can be
21 tailor-made?

22 A. Flexibility, yes.

23 Q. It's got flexibility. You can
24 create a surcharge. You can limit benefits.
15:27 25 You can basically treat the smoker differently

1 from the nonsmoker?

2 A. Yes. UGIP can too, but it's
3 probably easier to accomplish on a smaller
4 plan, in one that we're more in control of.

15:27 5 Q. And that's perfectly okay, as far
6 as you're concerned, in your field of
7 expertise?

8 A. Yeah. I think differentiating
9 between different types of employees and their
10 health problems I think is appropriate. We
11 have in the past had if you leave and come
12 back, you have evidence of insurability
13 issues. You have preexisting-condition
14 clauses. Those types of plan features I'm
15 comfortable with to protect the plan or the
16 validity of the plan. I don't think that one
17 employee ought to necessarily subsidize
18 another employee as it relates to healthcare
19 costs.

15:28 20 Q. I agree with you. We agree on
21 something.

22 A. Good.

23 Q. And by the same token, you don't
24 think that the smoker should get some type of
25 rebate or money back for money that they may

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15:28 1 have paid into the system, from the system?

2 Do you understand what I'm saying?

3 A. No.

4 Q. If there is a hypothesis that the
15:29 5 industry -- the tobacco industry has floated
6 in this case, and that hypothesis is that the
7 smoker should be receiving money back from the
8 State because it has paid excise taxes, you
9 would think that would be wrong, as well,
10 wouldn't you?

11 A. I don't know. I think the State
12 did and does receive excise taxes relating to
13 both tobacco and alcohol that is a significant
14 revenue source to the State. So I'm not
15:29 15 certain if you eliminate, you know, one of
16 those activities, similar to prohibition in
17 the '30s, how that impacts the overall, you
18 know, model or overall --

19 Q. Well, let's do it --

15:29 20 A. -- world.

21 Q. -- this way. If you've got a
22 smoker in the Tech system --

23 A. Okay.

24 Q. -- and that smoker has no
15:30 25 smoking-related illnesses for one year, but he

30 1 or she has paid a surcharge, should they get
2 that money back?

3 A. No.

4 Q. Why not?

15:30 5 A. Because they were -- they did
6 smoke during that time period; under your
7 example, and it's no different than I didn't
8 expect money back if I didn't have any
9 healthcare claims for the whole premium. If I

15:30 10 was well during that year, I did not expect
11 money back. I insured a risk during that time
12 period similar to purchasing insurance on your
13 home. You don't necessarily expect money back
14 just because you didn't have a fire or
15:30 15 casualty or something at your home. You
16 protected your residence and your financial
17 well-being during that time period and that's
18 what you were purchasing, was that protection.

19 Q. But you do believe that those who
15:31 20 are responsible for damage, injury, or
21 illness, should pay for that and not some
22 third party?

23 A. Well, I think they -- yeah, should
24 pay a portion of those costs. And if it's a
31 25 disproportionate amount, then yes, they should

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15:31 1 pay more if they're a more costly
2 participant. Similar to if you cover
3 dependents in addition to yourself, then you
4 pay more. But once again, there's an
15:31 5 anticipation that you will have higher claims.

6 Q. But if you've got someone who's a
7 welder or a sandblaster, for example, who also
8 happens to be a smoker, and that welder or
9 sandblaster has medical problems, but not
15:31 10 necessarily related to the smoking, but which
11 is traceable to the sandblasting or the
12 welding, which is called silicosis, you
13 wouldn't expect the -- you wouldn't expect for
14 the bill to be borne by the tobacco industry.

15:32 15 You would expect it to be borne by the
16 industry related to sandblasting or welding,
17 would you not?

18 A. I'm not sure I've got a complete
19 understanding of our example. But in
15:32 20 attempting to try to say that, I would think,
21 yeah, the industry should be somewhat
22 responsible, or the employer, in that regard
23 for that activity.

24 Q. Are you a member of Citizens
15:32 25 Against Lawsuit Abuse or Texans for Lawsuit

51716 9805

1 Reform?

2 A. No, sir. EMT

3 Q. Have you ever supported either of
4 those causes?

15:32 5 A. No, sir. 22:21

6 Q. Have you ever supported any tort
7 reform cause?

8 A. No, sir. 8

9 Q. Have you ever been involved in any
10 grassroots effort, campaign or otherwise? 42:21

11 A. No, sir. 11

12 Q. Do you know what a grassroots
13 campaign is? 81

14 A. Yes, sir. Somewhat politically
15 inactive would probably be the best
16 description. 81 42:21

17 MS. SAVARESE: Bob, when you
18 get to a logical stopping point, I'd like to
19 take a short break. 21

15:33 20 MR. SCHWARTZ: Yeah. It's a
21 good time. 12 22:21

22 THE WITNESS: Now is? 22

23 MR. SCHWARTZ: Yes.

24 THE VIDEOGRAPHER: We're off
25 the record.

(A recess was taken.)

THE VIDEOGRAPHER: We're on the record.

15:54 Q. (By Mr. Schwartz) Picking up on our discussion of -- just prior to the break, talking about the cost reduction, premium reduction --

8 A. Yes.

15:54 Q. -- do you have a way to compute the reduction in premium that should be implemented?

12 A. I've not spent any time looking at that nor have I been asked to.

15:54 Q. Well, do you know based on your training, education, and experience who or where you would go to get that information or to even begin to do something like that?

18 A. I really don't know where you would start that process.

15:58 Q. Let's turn to the second disclosure in Exhibit 1, please.

22 A. Okay.

24 Q. When was this document generated, to the best of your knowledge?

15:58 A. Mid-August.

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15:55 1 Q. '97?

2 A. Yes, sir.

3 Q. And did you see a final draft of

4 this document before it was circulated?

15:55 5 A. Yes.

6 Q. Were changes made to it?

7 A. Minor wording and grammatical.

8 Q. The same as before?

9 A. Yes, sir. No significant changes

15:55 10 were made.

11 Q. Okay. Did any of the opinions

12 change from the initial disclosure to this

13 final or complete disclosure?

14 A. Nothing really changed. Maybe

15:56 15 more specific -- they were made more specific

16 versus changing.

17 Q. Let's look at Number 1.

18 A. Okay.

19 Q. First of all, they're specified by

15:56 20 number.

21 A. Yes.

22 Q. We can easily see that. And

23 they're broken down, I think, by -- probably

24 differently than the paragraphs before,

15:56 25 because there were only four paragraphs of

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-15:56 1 your opinions in the initial disclosure and
2 here we have actually seven paragraphs, right?

3 A. Right.

4 Q. There are eight items, but the
15:56 5 eighth and ninth items are essentially
6 general --

7 A. Yes.

8 Q. -- and they're essentially the
9 same as before. But we'll talk about that.

15:57 10 Why don't you read the first
11 opinion that you're going to render in this
12 case, please.

13 A. Okay. "Texas Tech's actual
14 healthcare costs were often less than the
15:57 15 premiums appropriated by the State, and the
16 State undertook no effort to recoup any
17 surplus."

18 Q. All right. Now, looking at the
19 preliminary disclosure that's on the front of
15:57 20 that packet -- you might want to separate it
21 so you can look at it, whatever is convenient
22 for you. It appears that that has been
23 changed to some extent and not just in form,
24 but in substance. Would you agree with me, in
15:57 25 the way it's worded?

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57 1 A. Where is it in the earlier -- 08:31

2 Q. I think it's the second

3 paragraph. In the second paragraph, it says,

4 Texas --

15:58 5 A. I don't think there's a change. 09:01

6 It says, you know, the funding of Texas Tech's

7 health insurance plan, that that is a more

8 specific comment relating to the funding of

9 the Texas Tech's health insurance plan.

15:58 10 Q. I'm trying to relate it back to 01 10:31

11 the prior disclosure. This later disclosure

12 relates back to Paragraph 2 where it says

13 Texas Tech -- had Texas Tech not joined UGIP,

14 Texas Tech's healthcare insurance costs would

15:58 15 have been lower. And it continues to say that 01 10:31

16 the actual healthcare costs were often less

17 than the healthcare premiums appropriated by

18 the State. Okay? 01 10:31

19 A. Okay. 01 10:31

15:58 20 Q. "Tech's actual healthcare costs 01 10:31

21 were often less than the premiums appropriated

22 by the State."

23 A. That's nearly --

24 Q. That is word for word. "And the

59 25 State undertook no effort to recoup any

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15:59 1 surplus in premiums." The only difference is,
2 is it has the word "in premiums" out of
3 there. It's just something inferred on the
4 final disclosure. Right?

15:59 5 A. That's correct. So to me, that's
6 nearly verbatim, that statement, so I don't
7 think there was any change.

8 Q. All right. Let's look at Opinion
9 Number 2.

15:59 10 A. Okay.

11 Q. Would you read that, please.

12 A. Yes. "Higher education
13 institutions could have (and, in fact, the
14 University of Texas System did) take steps to
15 mitigate or eliminate what the State contends
16 were additional employee health benefit costs
17 attributable to smoking by charging additional
18 premiums to smokers or by reducing benefits to
19 smokers."

15:59 20 Q. And if we look at the third
21 paragraph of the initial disclosure, it
22 says, "Texas Tech could have taken steps."

23 A. Right. And that was broadened to
24 higher education institutions.

15:59 25 Q. Right. And then it says, "To

51716 9811

00 1 mitigate or eliminate" -- and those words are
2 used --

3 A. Yes.

4 Q. -- "what the State contends are

16:00 5 additional employee health benefit costs
6 attributable to smoking by charging an
7 additional premium."

8 A. Yeah.

9 Q. It's in the singular on the
16:00 10 preliminary, and it's in the plural on the
11 final. It says "an additional premium" and on
12 the final one it says "additional premiums to
13 smokers or by reducing benefits to smokers,"
14 right?

16:00 15 A. Right.

16 Q. So the substantive change, if
17 there is one in here, is to make it more
18 general and apply it to higher education
19 institutions instead of just Tech?

16:01 20 A. That's correct.

21 Q. And really, your testimony has
22 been that you have some general knowledge
23 about the other higher institutions, but your
24 specific knowledge is about Tech.

01 25 A. That's correct.

51716 9812

16:01 1 Q. Do you feel that you have
2 sufficient factual knowledge about these other
3 institutions of higher education where you can
4 make a statement like this?

16:01 5 A. Yes. As it relates to the steps
6 relating to smoking, I think I do. Those
7 are -- I think I do.

8 Q. And all of our discussion
9 previously today about charging additional
16:01 10 premiums to smokers or reducing benefits to
11 smokers applies to every one of these opinions
12 in the final disclosure equally as it did to
13 the initial disclosure?

14 A. Could you repeat that?

16:02 15 Q. I can repeat it.

16 A. Or -- repeat it. Okay.

17 Q. We had our discussion this morning
18 and this afternoon about your opinions from
19 this initial disclosure, right?

16:02 20 A. Right.

21 Q. And you stated some portions of
22 your opinion, and those opinions that you
23 stated would -- all of them would apply to
24 this subsequent disclosure equally.

16:02 25 A. That's correct.

51716 9813

02 1 Q. Because in your opinion there's 80:01
2 not much difference, if any. 80:02
3 A. That's correct. 80:03
4 Q. Let's look at the third 80:04
16:02 5 one. "Higher education health insurance plans 80:05
6 could have adopted stricter underwriting 80:06
7 guidelines to limit the coverage provided to 80:07
8 smokers or to limit or exclude coverage for 80:08
9 selected health conditions." 80:09
16:02 10 A. Which is -- 80:10
11 Q. Where is that one in the 80:11
12 preliminary? 80:12
13 A. It's very similar to Number 2, but 80:13
14 maybe a little more specific. 80:14
16:03 15 Q. It's one that's not verbatim like 80:15
16 the first two were, in part. 80:16
17 A. That's correct. 80:17
18 Q. So let's talk about that one. 80:18
19 "Higher education health insurance plans 80:19
16:03 20 could have adopted stricter underwriting 80:20
21 guidelines to limit the coverage provided to 80:21
22 smokers" -- 80:22
23 A. Rather -- yeah. Go ahead. Ask a 80:23
24 question. 80:24
03 25 Q. -- "or to limit or exclude 80:25

51716 9814

-16:03 1 coverage for selected health conditions." How
2 is that different from Number 2?

3 A. Number 2 is related primarily to
4 charging an additional premium on a monthly
16:03 5 basis to the employee that smokes. Number 3
6 relates to the plan design that says we'll
7 charge you the same, but we're going to cover
8 these costs or benefits differently, or
9 exclude some of those coverages as they relate
16:04 10 to smoking. And so it's on an occurrence
11 standpoint or when you receive healthcare. At
12 that point in time, there's a differential
13 made, but there's no differential made --
14 would be different than the differential
16:04 15 discussed in Number 2.

16 Q. In other words, in Number 3 you're
17 saying we're not going to provide some
18 services to smokers?

19 A. Or we may have a different cost
16:04 20 sharing for certain things.

21 Q. It doesn't say anything about
22 money. That may be implied, that may be a
23 result, but it says basically we're going to
24 limit the coverage provided to smokers, or
16:04 25 limit or exclude coverage from selected health

51716 9815

16:04 1 conditions. You're basically pulling back
2 services for certain people, right?

3 A. Yes. Could be. That could be
4 part of it.

16:04 5 Q. What would another part be?

6 A. As I indicated, where possibly we
7 would change the reimbursement percentage for
8 that. There's others -- there are other
9 examples.

16:05 10 Q. But you see what I'm saying?

11 That's not stated in here. It's inferred in
12 your opinion, but it's not stated in your
13 opinion.

14 A. I think stricter underwriting
16:05 15 guidelines, to me, that's what that says or
16 kind of that infers within that wording.
17 Without getting into using specific examples,
18 it's challenging to make that clear.

19 Q. On Number 4 it says, "Given the
16:05 20 procedure utilized by the State to estimate
21 premiums, premiums are inherently
22 speculative." Explain your opinion there,
23 please.

24 A. Okay. Premiums -- healthcare
25 premiums are impacted by a lot of different

51716 9816

16:06 1 factors: The level of current healthcare
2 costs, what's it costing to currently provide
3 those health benefits, any planned changes
4 either by the employer and/or by State or
16:06 5 federal governments that talk about or
6 legislate requirements as it relates to
7 healthcare, either how much or how often or
8 those types of things. There's projections
9 forward as it relates to cost. There's
16:06 10 administrative cost, changes in the makeup of
11 your group, et cetera. There are a number of
12 factors involved and so, therefore, they're
13 somewhat speculative or inherently speculative
14 in setting those rates.

16:07 15 Q. Well, tell me a better way than
16 the way that the State has done it.

17 A. I have not focused on a better
18 way. That's probably outside of my expertise,
19 is coming up with a better overall
16:07 20 methodology.

21 Q. Well, how can you criticize if you
22 don't have a better plan or a better solution?

23 A. I don't know by stating that
24 they're inherently speculative that that's
16:07 25 really a criticism. It's just --

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16:07

1 Q. Well, is it meant --

16:08

2 A. -- a reminder or -- remember that
3 there are variables involved in these
4 projections or dollar amounts. Just a
5 reminder that there -- that it's not an exact
6 science.

16:08

7 Q. Has anyone who -- any of the
8 lawyers or any of the staff or anybody
9 associated with the tobacco industry indicated
10 why this opinion is necessary to them or what
11 they're going to use it for?

12 A. No, sir. Not to me.

16:08

13 Q. Well, what do you think it will be
14 used for?

15 A. Hopefully to inform the jurors --
16 fully inform the jurors that these numbers,
17 you know, are subject to change or have
18 items -- assumptions and other things built
19 into those numbers that might impact the final
20 result.

16:08

21 Q. But you can't tell me of another
22 formula or another way to estimate the
23 premiums that would not contain any
24 assumptions, first of all?

16:08

25 A. No.

51716 9818

16:08 1 Q. And you can't tell me another
2 method that would not be subject to change or
3 subject to some other assumption, right?

4 A. That's correct.

16:09 5 Q. How does one -- strike that.
6 Explain to me why the State's
7 method used in estimating the premiums is
8 inherently speculative.

9 A. Okay. For one, they are trying to
16:09 10 estimate the healthcare premiums for a future
11 time period. They don't know, you know, what
12 a specific procedure may cost at that point in
13 time. They may try to have contracts to
14 protect or help define that number. They do
16:10 15 not know the volume of services that's going
16 to be required during that time period.

17 There may be changes to the
18 employee makeup of the group due to people
19 leaving or new people coming that they don't
16:10 20 know about. And the State of Texas
21 specifically does a two-year budgeting
22 process, and so the second year is more
23 difficult because of the greater time span in
24 trying to project. The further forward you
16:10 25 get, the more difficult it is to have accurate

51716 9819

10 1 projections.

2 Q. Do you contend, even though in
3 your opinion the procedure utilized by the
4 State to estimate the premiums is speculative,
16:11 5 leads to the premiums or the numbers being
6 speculative, do you contend that that
7 procedure is not reasonable?

8 A. No.

9 Q. Do you contend that there is no
16:11 10 certainty based on the procedure utilized,
11 even though it might be speculative? In other
12 words, we use a word called reasonable
13 certainty. It's not exact, but it's reliable
14 enough.

16:11 15 A. I think you could put some, you
16 know, percentage parameters or collars upon
17 that, on the projections, and have them be
18 reasonable -- reasonable certainty. Sounds
19 like an oxymoron. It may not be. But I think
16:12 20 would be reasonable projections.

21 Q. Agreeing with me and assuming that
22 reasonable certainty is less than absolute
23 certainty --

24 A. Okay.

12 25 Q. -- would you say that the

51716 9820

16:12 1 procedure utilized by the State to estimate
2 its premiums has resulted in premiums which
3 are calculated to a reasonable certainty as
4 opposed to an absolute certainty?

16:12 5 A. I would -- as it relates to the
6 Uniform Group Insurance Plan, I think that is
7 correct. Since they use those numbers for
8 funding other plans, Higher Education
9 specifically, as it relates to those I am
16:12 10 uncertain as to whether they would meet that
11 criteria of reasonable certainness as it
12 relates to those plans.

13 Q. How far off the mark would we be?

14 A. I don't know.

16:13 15 Q. You don't -- you can't tell us
16 what it would take to get it within reasonable
17 certainty?

18 A. No, sir.

19 Q. Let's look at Number 5. It says
16:13 20 the contributions received by ERS, U.T., and
21 A&M for their respective health insurance
22 plans do not consist solely of State funds.

23 A. Yes, sir. That's what it says.

24 Q. And why is that significant in
16:13 25 relation to this lawsuit?

51716 9821

13 1 A. My understanding of it is, is the
2 State is requesting reimbursement for costs
3 that they, the State, have incurred, and that
4 they paid for these costs and therefore should
16:14 5 be reimbursed for those, where in actuality a
6 number of the insurance premiums or transfers
7 into those plans came from other funding
8 sources: Federal, local, employee, and State.

9 Q. If this lawsuit is about the State
16:14 10 suing to recover what it paid out through
11 Medicaid for tobacco-related illnesses -- are
12 we together right there?

13 A. Okay.

14 Q. Do you understand that to be the
16:14 15 case?

16 A. Well, I thought they were
17 requesting dollars also associated with the
18 employee insurance benefit in addition to
19 Medicaid or Medicare.

16:14 20 Q. Assume with me that we're seeking
21 the reimbursement of funds -- let's just make
22 it general -- reimbursement of funds paid out
23 for smoking-related illnesses. All right?

24 A. Okay.

15:15 25 Q. It's kind of a cross between you

16:15 1 and me.

2 A. Okay.

3 Q. What difference does it make where
4 the funds came from?

16:15 5 A. To me it does make a difference
6 if --

7 Q. Why?

8 A. Because I think those funds should
9 go back to whoever paid for those costs if --
16:15 10 yeah. I think it ought to go back to whoever
11 paid for those costs.

12 Q. If the funds -- do you know what
13 the general fund is?

14 A. For the State of Texas?

16:15 15 Q. Yes, sir.

16 A. Yes, sir.

17 Q. Is it your understanding that
18 funds that go to pay for these programs and
19 then have gone to pay for smoking-related
16:15 20 illnesses and other expenses that we have been
21 talking about come from the general fund?

22 A. Some of them do.

23 Q. Where do the others come from?

24 A. They come from other funding
16:15 25 sources. The universities have most of the

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16 1 examples of other types of funding sources.
2 If they have received research dollars that
3 are either private or federally funded and
4 we're paying a scientist to do a particular
16:16 5 type of research or a portion of his salary is
6 being paid to -- for him to do that research,
7 then that portion of the healthcare premium is
8 also being charged or funded by that other
9 entity or other organization. That may be a
16:16 10 State agency -- I mean, a federal agency like
11 the Department of Agriculture or the
12 Department of Defense or something like that,
13 or it could be a private foundation or a
14 private company providing those monies.

16:16 15 That's one type of other funds that would be
16 coming in to the healthcare plans that would
17 not be State general fund appropriated.

18 Q. Well, if it's given to the State,
19 as long as the State recoups it, it can use it
16:17 20 for the purpose for which it was intended,
21 wouldn't you agree with me?

22 A. As long as the State recoups it?
23 I guess what I was trying to clarify is they
24 would be recouping a cost that they did not
17 25 originally pay.

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16:17 1 Q. Well, but they're only given so
2 much money from these other sources. They
3 don't -- they can't just go and get any time
4 they want, there's a certain procedure that
16:17 5 needs to be followed and there are limited
6 amounts of funds that are available.

7 A. I agree. But I'm saying,
8 specifically as it relates to those -- and the
9 federal government is fairly picky about
16:17 10 that -- that you can only charge them the
11 appropriate cost. In other words, you may
12 have submitted and said this scientist makes
13 \$5,000 a month plus we're going to cover --
14 provide normal benefits, employee benefits,
16:17 15 insurance, et cetera, well, they do not want
16 us charging the federal government more than
17 what we, you know, charge the State or
18 allocated the State provided for that same
19 type of insurance, you know, for the guy
16:18 20 that's officing in the next office or
21 whatever.

22 So you're right, there is a
23 requirement, but there -- it cuts both ways in
24 that if the costs, the true costs were less
16:18 25 than that, then I suspect the federal

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18 1 government would want, you know, their own
2 proportion of that back. And so they should
3 be the person or the entity requesting that
4 and not the State of Texas.

16:18 5 Q. Do you know who would own those
6 funds once they're paid to the State of Texas?

7 A. You mean from the federal
8 government? I do not. I do not know who
9 would own those funds.

16:18 10 Q. So you don't know who would have
11 the right to reimbursement if you don't know
12 who owns them?

13 A. Okay. It would --

14 Q. Isn't that right?

16:18 15 A. From a legal standpoint, I do not
16 know. From a general accounting costing type
17 approach, it would appear that they would
18 be -- would be reasonable to expect some of
19 those monies to go back to all the funding
16:19 20 sources.

21 Q. But you agree with me that if the
22 federal government has lost ownership and
23 entitlement to that money and it's passed to
24 the State of Texas, the State of Texas is the
19 25 one that's entitled to that?

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16:19 1 A. If they have lost the right of
2 ownership, I -- based on my experience and
3 indirect costs and other things relating to
4 the federal government, it is not my
16:19 5 understanding that they would have lost that
6 right.

7 Q. Well, let's talk about -- and
8 limit the discussion to smoking-related health
9 costs.

16:19 10 A. Okay.

11 Q. Medicaid pays out billions of
12 dollars for smoking-related health costs. You
13 understand that?

14 A. I don't know. Medicare is really
16:19 15 outside of my area of expertise. If you're
16 asking for my -- you know, I assume it's a
17 costly plan. I have no idea whether that's
18 hundreds of millions or billions or whatever.

19 Q. Well, haven't the lawyers for the
16:20 20 tobacco industry in this case shown you
21 anything that would indicate what our
22 contention is about how much Medicaid has paid
23 out for smoking-related illnesses in Texas?

24 A. No, sir.

16:20 25 Q. You haven't seen the damage model?

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16:20

1 A. I've seen the damage model.

2 Q. Well, doesn't that state --

16:20

3 A. It has it -- it has the Medicaid
4 numbers in there. Those numbers I did not
5 focus on because the -- it is kind of, as I
6 indicated, outside of the scope of the area
7 that I'm addressing.

16:20

8 Q. You don't have an opinion about
9 Medicaid dollars for -- spent for
10 smoking-related illnesses at all?

11 A. That's correct. I have not -- I
12 do not have and have not.

16:21

13 Q. All right. Number 6 says
14 contributions allocated by the State for State
15 employee health insurance plans cover expenses
16 in addition to health insurance claims costs.

17 Explain that for me, please.

16:21

18 A. Okay. The allocation amount that
19 the State appropriates includes costs for
20 other things besides just health insurance
21 claims costs. You would have the
22 administrative cost associated with
23 administering the plan, enrollment,
24 maintenance to changes, et cetera. In
25 addition to that, there is a small life

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16:22 1 insurance component to the plan that is not a
2 health insurance related item.

3 There are other items, as we
4 discussed, the University of Texas' plan
16:22 5 includes dental insurance. And once again,
6 all of these things are all a part of
7 premium.

8 MS. SAVARESE: Could we go
9 off the record for a minute?

16:22 10 MR. SCHWARTZ: Yeah.

11 THE VIDEOGRAPHER: We're off
12 the record.

13 (Off-the-record
14 discussion.)

16:22 15 THE VIDEOGRAPHER: We're on
16 the record.

17 Q. (By Mr. Schwartz) Mr. Cosby, we
18 were discussing the opinions stated in your
19 latest disclosure statement, and I believe we
16:30 20 were talking about Number 7. Well, no, see

21 A. Number 6, I believe.

22 Q. -- we were talking about
23 Number 6. Contributions allocated to State
24 for State employee health insurance plans,
16:37 25 covered expenses in addition to health

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1 insurance claims costs.

2 A. Yes.

3 Q. Was there anything else that you
4 were going to tell me about that?

16:37 5 A. No. I think -- I believe I
6 included all the items, without going back and
7 looking, but I believe we covered all those.

8 Q. It says in Number 7: In addition
9 to the statements listed above, Mr. Cosby is
16:37 10 expected to provide fact testimony consistent
11 with his initial disclosure. And I -- can you
12 tell me what that fact testimony would be?

13 A. I guess it relates primarily to
14 the Texas Tech plan, health insurance and the
16:37 15 buildup of reserves and some of those types of
16 pieces of information.

17 Q. All right. What specifically have
18 you been told that you might be required to
19 testify about factually? And I need the
16:38 20 information.

21 A. The -- would be the healthcare
22 balances or fund balances or reserves within
23 the health plan at Texas Tech University
24 during the time that they were self-insured is
38 25 the primary fact item which would tie into the

16:38 1 comments or testimony relating to Tech's
2 plan. Costs could have been less, et cetera,
3 as it ties into those opinions above there.
4 Those are the facts on that.

16:38 5 Q. All right. Number 8 says
6 Mr. Cosby may also be asked to comment on the
7 opinions of other witnesses as well as the
8 evidence relied -- they relied on to the
9 extent those opinions relate to his area of
16:39 10 expertise. Right?

11 A. Yes, sir.

12 Q. And that's identical to --

13 A. The earlier.

14 Q. -- the earlier one?

16:39 15 A. Yes.

16 Q. And then Number 9, Mr. Cosby may
17 form additional opinions depending on the
18 testimony of other witnesses and additional
19 documents disclosed by the State. What
16:39 20 documents other than these listed here, and
21 we're going to talk about those, listed here
22 on the last three pages of your disclosure
23 have you looked at?

14 A. As it relates to this case, I have
16:39 25 not looked at anything that has not been

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39 1 provided by legal counsel and listed here in
2 this process, outside of the documents that I
3 have done from memory as it relates to Texas
4 Tech and those specific items that we talked
16:40 5 about earlier either this afternoon or this
6 morning. Some of those we -- I am relying on
7 but have not specifically seen again.

8 Q. All right. Let's look at the
9 first page of that list of documents that you
16:40 10 were to have relied on in formulating your
11 opinions.

12 A. Okay.

13 Q. Would you read each one of the
14 documents -- not the Bates numbers, but just
16:40 15 the name of the document and then we'll talk
16 about it?

17 A. Okay. First item is the
18 Department of Health and Human Services
19 Departmental Appeals Board, Docket
16:40 20 Number A-96-030, Report of Witness Dial's
21 Expected Testimony.

22 Q. What is it that you recall from
23 your review of that document?

24 A. Actually, the review of that
41 25 document is that Mr. Dial's testimony outside

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16:41 1 of his background and involvement in the ERS
2 plan really wasn't directly related to UGIP or
3 health insurance. As I remember, it was
4 broader, more primarily related to Medicaid
16:41 5 and not -- and not the area that I was
6 interested in.

7 Q. Was there anything in that
8 particular publication that you used or relied
9 upon in formulating your opinions in this
16:41 10 case, either in whole or in part?

11 A. Not that I remember.

12 Q. What about the next document?

13 A. Do you want me to read it?

14 Q. Well --

16:41 15 A. Or just --

16 Q. It's the same publication except
17 that it has to do with -- it's from the
18 Appeals Board, but it has to do with the
19 witness, Travis --

16:42 20 A. Dickey Travis. Comments would be
21 identical to that.

22 Q. All right.

23 A. Both of those seem to relate to
24 another case.

16:42 25 Q. And there's nothing in that

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42 1 document that you used in formulating any of
2 your opinions in this case?

3 A. That's correct.

16:42 4 Q. What about the index of ERS
5 documents? Did that tell you anything?

6 A. The index in and of itself did
7 not. It did not. The index didn't.

8 Q. Anything about the index that you
9 used in formulating any opinions in this case?

16:42 10 A. Not the index, no. I think some
11 of the later documents came from that review,
12 but the index in and of itself, no.

13 Q. All right. What about the PCA
14 health plans of Texas --

16:42 15 A. I do not --

16 Q. -- document?

17 A. -- remember those documents.

18 Q. Don't even remember reviewing it?

19 A. I don't remember reviewing it.

16:43 20 Q. What about the '93 through '94 HMO
21 annual reports?

22 A. I don't remember those.

23 Q. Do you know if you even reviewed
24 that document?

43 25 A. Without seeing it again, I

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16:43 1 couldn't say.

2 Q. And that would go the same for the
3 one above it?

4 A. Yes, sir.

16:43 5 Q. Let's go to the next one down.
6 Texas A&M University System Annual Report 1993
7 through '94.

8 A. Yes. I reviewed that document.
9 And there's nothing in it that I relied upon.

16:43 10 Q. In formulating your opinions?

11 A. That's right.

12 Q. The next entry is Humana
13 Healthcare Plan's Annual Report '93
14 through '94.

16:43 15 A. I read that one but -- or reviewed
16 it or scanned it, but no specific items come
17 to mind.

18 Q. All right. And was there anything
19 from that document that you used or drew on in
20 formulating your opinions in this case?

21 A. Not that I remember.

22 Q. The next one is the HMO plan
23 utilization data. I think it says PCA Health
24 Plans of Texas. Do you remember reviewing
25 that document?

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16:44 1 A. No.

2 Q. What about the 1994 through '95

3 HMO annual reports? Do you remember reviewing

4 those?

16:44 5 A. No, sir. No, sir.

6 Q. What about the next document, the

7 FirstCare Southwest Health Alliances

8 Utilization and Cost Data for Texas A&M?

9 A. I did review that. It is -- but

16:44 10 did not utilize any of that information

11 directly. FirstCare is an HMO out in West

12 Texas, so I was familiar with the

13 organization.

14 Q. Well, did any of the information

16:45 15 in that report help you formulate any of your

16 opinions in this case?

17 A. No, it did not.

18 Q. And none of it is used in the

19 opinions that you rendered in this case?

16:45 20 A. Do what?

21 Q. And none of it is used --

22 A. Right. None of it was used.

23 Q. What about the next entry, Human

24 Annual Reports for Texas A&M, September '95?

16:45 25 A. I don't remember it.

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16:45 1 Q. Physician Corporation of
2 America '94 Annual Report?

3 A. Don't remember it.

4 Q. Texas A&M University Premium
16:45 5 Analysis HMO and Premium Totals, August 22nd,
6 1996?

7 A. I did review that and I don't
8 remember whether it had any specific tie-in to
9 some of my general comments relating to A&M.

16:46 10 Q. How would we refresh your
11 recollection about that?

12 A. I would have to review that again.

13 Q. Do you still have all these
14 articles or documents?

16:46 15 A. Yes, sir. I don't have them with
16 me, but I still have them.

17 Q. You have them at your office?

18 A. In my office. Yes, sir.

19 Q. Did you make any notes on these
16:46 20 publications or on a separate piece of paper
21 or in a book somewhere?

22 A. No. Not really notes, per se. I
23 did two different things. One, sometimes I
24 would write in the margins as I was reviewing
16:46 25 them, and also I used sticky notes from time

51716 9837

46 1 to time if there was a page that was of
2 particular interest to me or made a statement
3 that I thought, you know, was useful or
4 informative, I would indicate that page or
16:47 5 note that page so I could go back to it
6 later. So there are some page indicators, I
7 guess, scattered throughout these documents.
8 But there's no really summary or notes in the
9 normal context of what I think you're asking
16:47 10 about.

11 Q. Was it your opinion before you
12 took on this assignment that going through
13 this was going to be worth the money?

14 A. Was it my opinion? Yes.

16:47 15 Q. You still have that opinion?

16 A. It's being tested.

17 Q. You know, we're -- there's still
18 trial, so I would raise your rate, okay? No.
19 Has it proven to be worth the money that you
16:47 20 have been paid?

21 A. So far I feel like I have been
22 adequately compensated for the time and
23 effort.

24 Q. All right. Texas A&M University
25 System '79 through '82 Employee Medical Claim

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16:48 1 Breakdown.
2 A. I don't remember it.
3 Q. Texas A&M University System -- and
4 my copy is really bad.
16:48 5 A. Pooled Medical Experience for Year
6 Ending August 31st, 1980.
7 Q. All right.
8 A. No.
9 Q. Don't remember that one?
16:48 10 A. No.
11 Q. Mr. -- can you read your copy?
12 Keith?
13 A. I cannot.
14 Q. Freshgak (sic) or something?
16:48 15 Addressing SEBAC November 18th, '89?
16 A. I remember the SEBAC, reviewing
17 information related to SEBAC. I do not know
18 whether it was this particular document. I
19 believe that -- yeah.
16:48 20 Q. I think it's the only one in here
21 with that title.
22 A. So then that would be it.
23 Q. And is there anything from that
24 particular publication that you used in
16:48 25 formulating --

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48 1 A. No.

2 Q. -- your opinions?

3 A. No.

4 Q. '89 through '90 Rates for Design

16:48 5 Alternatives, Texas A&M University System,

6 October 26, 1989?

7 A. Yes. I did review that.

8 Q. Did you use any of it in

9 formulating your opinions?

16:49 10 A. I guess maybe indirectly, yes, as

11 far as confirmation or reiteration that A&M

12 did not have any smoking premium as it relates

13 to their rates, surcharge or premium.

14 Q. Were your opinions formulated

16:49 15 before you got these documents and started

16 reading them?

17 A. A number of these opinions are

18 because they relate to the experiences and the

19 information that I already had.

16:49 20 Q. Can you tell me which opinions

21 were formulated after you received and read

22 any of these documents?

23 A. My opinions relating to the input

24 items of the model, as I had not seen that

49 25 information previously. And I will be glad to

51716 9840

-16:50 1 review these, I guess, and see, relating to
2 the specific testimony items, maybe 1
3 through 7.

4 Q. Yes.

16:50 5 A. I believe all of these I held
6 these opinions prior to. I may have updated
7 information or substantiated opinions that I
8 had by reviewing this information. I did
9 review nearly all these documents.

16:50 10 Q. Well, my question would be and
11 what I need to know is which one of these
12 publications were used in whole or in part to
13 formulate any of your opinions in whole or in
14 part.

16:51 15 A. Okay. Okay. Some of the
16 opinion -- you know, portions of my opinions
17 were based on the policy options for the Texas
18 group health insurance programs, August 1990.

19 Q. Which opinions would those have
20 been?

21 A. The opinions that relate to ERS
22 and what they could have done or should have
23 done as it relates to smoking-related costs.

24 Q. Okay.

16:52 25 A. The -- for the various years, the

51716 9841

52 1 discussion relating to the premiums and the
2 amounts used are all contained, and I did go
3 back and review those and verify those dollar
4 amounts in the appropriations bills. All the
16:52 5 ones that are listed here have specific
6 information as it relates to premiums and
7 premium levels for both Higher Education and
8 the UGIP plan.

9 Q. Okay.

16:53 10 A. I can't tell you specifically
11 which ones, but the University of Texas
12 System, that's the UTS --

13 Q. Uh-huh.

14 A. -- documents kind of starting
16:53 15 there at the top of that page and running down
16 to the index of Texas Tech documents, those
17 were reviewed in forming some of the opinions
18 relating to the University of Texas System
19 plan.

16:54 20 Q. There's actually two other ones on
21 the preceding page.

22 A. They may have been used also.

23 Q. At the very bottom.

24 A. Well, one I did not -- the older
16:54 25 information tended to be less useful and

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-16:54 1 really I focused on the late '80s to the '90s,
2 was my primary area of interest. The others
3 tended to be more general and historical.
4 Healthcare has changed quite a bit in that
16:54 5 time period.

6 Q. '83 wasn't significant to you?

7 A. No, sir.

8 Q. '84 wasn't?

9 A. No, sir.

16:54 10 Q. Was '85?

11 A. Late '80s. '87, '88, somewhere in
12 that time period.

13 Q. All right.

14 A. I'm not saying there isn't
16:54 15 something in the '86, but it would get more
16 useful as we became more current with that
17 information.

18 Q. Okay.

19 A. That I relied on. The Vincent
20:55 20 Miller model report, I did review that and
21 relied on some of the statements in that in
22 forming my opinions. I guess the updated
23 Vincent Miller, I have reviewed both of those,
24 even though I didn't notice a lot of changes
16:56 25 between the two of them. And then also the

51716 9843

55 1 Wendy Max estimation of smoking attributable
2 to public expenditures, I reviewed that and,
3 once again, it was the basis or primary basis
4 for my comments on those items.

16:56 5 I did also rely on some of James
6 Guckian's comments as it relates to my
7 comments on his deposition information. He
8 recently -- to more or less verify maybe
9 specific dates or things I knew in general
16:56 10 that they may have handled in more detail, and
11 so that was helpful to be able to get specific
12 dates as it relates to U.T.'s health plan.

13 Steve Hassel's on A&M. Once
14 again, more specific verification-type
16:56 15 information of opinions I already had from
16 earlier discussions -- I know Steve -- that we
17 would have had. But it was helpful to have a
18 document to look at specifically relating to
19 this area.

16:57 20 I don't think any of the rest of
21 them had any direct correlation.

22 Q. None of the rest of them were used
23 in formulating your opinions?

24 A. No, sir.

25 MS. SAVARESE: Bob, since the

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16:57 1 time this list was produced to the State,
2 additional depositions have occurred and
3 Mr. Cosby has received two deposition
4 transcripts from us that aren't on this list.

16:57 5 Q. (By Mr. Schwartz) Okay. What are
6 those?

7 A. The -- well, Miller's -- is
8 Miller's deposition on here? I know his model
9 is, but I don't think it's on there. And then
16:57 10 Wendy Max's is not listed here.

11 Q. Are those the two?

12 MS. SAVARESE: Yeah.

13 A. That's the only ones I remember
14 that are not on this list.

16:57 15 Q. (By Mr. Schwartz) And you used
16 those two in formulating opinions?

17 A. Yes, sir.

18 Q. We started at the top of this
19 list, and you were telling me that there were
16:58 20 some documents which you didn't review. And
21 you stopped -- we stopped that process a
22 little over half the way down with Keith
23 Freshgak or Freeshak (sic), whichever it is.
24 Can you tell me from there down which
16:58 25 documents you didn't review or don't recall

51716 9845

58 1 reviewing?

2 A. As far as I know, I have
3 reviewed -- reviewed or scanned all of these
4 documents. I believe I had stated that I did
16:58 5 not remember specific documents -- remember
6 reviewing that specific document or I don't
7 recognize it from the title that's given here.

8 Q. Okay. Can you continue that
9 process?

16:58 10 A. Sure. Okay. I remember the next
11 one, the '89 -- '90 Rates for Design
12 Alternatives. I did remember reviewing that.
13 Once again --

14 Q. You can just tell me which ones
16:59 15 you don't remember.

16 A. Don't remember?

17 Q. Yes, sir.

18 A. Okay. Great. That will be
19 easier.

16:59 20 The top of Page 2, the Month
21 Totals for Health Maintenance Organizations.

22 Q. You relied on that?

23 A. No. I --

24 Q. Oh, I'm sorry.

59 25 A. I don't remember that particular

51716 9846

-16:59 1 document. The Premium Analysis Chart, I don't
2 remember those -- either one of those.

3 Once again, I don't specifically
4 remember the last two on that page, the '83
17:00 5 and '84 information. All the rest of them I
6 remember specifically.

7 Q. Okay. Have you made any analysis
8 of your opinions as they might apply to any
9 other states?

17:01 10 A. No, sir.

11 Q. What other jobs have you held in
12 your lifetime that aren't related to your
13 professional endeavor of accounting or what
14 you do at these banks?

17:01 15 A. I guess the other jobs would have
16 been primarily summertime employment during
17 high school and college, would have been the
18 only other jobs, per se, that I would have
19 held.

17:02 20 Q. And what would those have been?
21 What have you done?

22 A. Boy, a lot of different things.
23 Worked on a farm a couple of summers, worked
24 on a water well repair crew that go out and
17:02 25 repair irrigation wells, worked part-time in a

51716 9847

02 1 bank as a teller for a couple of years while I
2 was in college. I think that's about it.

3 Q. Have you ever worked in a 7-Eleven
4 or any other type of retail store?

17:02 5 A. No, sir.

6 Q. Have you ever purchased a pack of
7 cigarettes?

8 A. Not that I remember. I remember
9 just vaguely trying cigarettes when I was a
17:03 10 teenager, but beyond that --

11 Q. How old?

12 A. I don't remember. I would say in
13 the 13, 14, 15 range.

14 Q. Where did you get the cigarettes?

17:03 15 A. I don't remember.

16 Q. What made you want to try them?

17 A. Curiosity, I guess.

18 Q. Do you remember the brand that you
19 tried?

17:03 20 A. No, sir.

21 Q. Did a friend have them or did
22 you --

23 A. That would be my guess, but I do
24 not remember that.

03 25 Q. Did you serve in the military?

51716 9848

17:03 1 A. No, sir.
2 MR. SCHWARTZ: Take a short
3 break.
4 THE VIDEOGRAPHER: We're off
17:04 5 the record.
6 (A recess was taken.)
7 THE VIDEOGRAPHER: We're on
8 the record.
9 MR. SCHWARTZ: Pass the
17:07 10 witness. Thank you, sir.
11 MS. SAVARESE: I would like
12 to, before we go off the record, just
13 summarize or confirm our disagreement so that
14 perhaps we can perhaps get the transcript to
17:07 15 the judge so the judge can see it all in one
16 piece. My understanding of what occurred is
17 that Mr. Schwartz asked the witness a question
18 and instructed the witness to answer the
19 question by writing down the response to the
17:08 20 question, which I interpreted to mean
21 everything the witness knows about the model.
22 And while the defense was willing to permit
23 the witness to verbally answer the question,
24 defense took exception to requiring the
17:09 25 witness to write down the answer.

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08 1 So at that point we called
2 the magistrate, but were unable to get anyone
3 on the telephone who could rule on the dispute
4 today. At that time, defense counsel made the
17:08 5 agreement that in the event the judge hears
6 the dispute and determines that the witness
7 should be required to write out a response to
8 Mr. Schwartz' question that I would bring
9 Mr. Cosby back to answer that single
17:08 10 question.

11 We then returned to the
12 deposition and picked up on the record, and in
13 my opinion Mr. Schwartz then asked the
14 question and it was answered verbally, and
17:09 15 we've now concluded the deposition for today.

16 We've agreed to --
17 Mr. Schwartz continues to believe that there's
18 a problem and, therefore, we've agreed to get
19 on the phone with the judge at 1:00 o'clock
17:09 20 tomorrow, Thursday, September 2 --

21 THE WITNESS: 5th.

22 MS. SAVARESE: 5th.

23 Mr. MacRae, would you like to
24 add anything?

09 25 MR. MacRAE: No, ma'am. Do

51716 9850

17:09

1 you want to whisper?

80

2

MS. SAVARESE: Mr. Schwartz,

3

would you like to add anything?

4

17:10

5

MR. SCHWARTZ: You made a

6

statement. I don't know what -- for the

7

record, I guess, but that was your statement.

8

MS. SAVARESE: Then we're off

9

the record for the day.

17:10

10

THE WITNESS: Okay.

11

THE VIDEOGRAPHER: We're off

12

the record.

13

14

15

16

17

18

19

20

21

22

23

24

25

51716 9851

STATE OF TEXAS X
COUNTY OF DALLAS X

I, Ronald R. Cope, a Certified Shorthand Reporter duly commissioned and qualified in and for the State of Texas, Registered Professional Reporter and Certified Realtime Reporter, do hereby certify that there came before me on the 24th day of September at Jones, Day, Reavis & Pogue located at 2001 Ross Avenue, Suite 2300 in the city of Dallas, County of Dallas, State of Texas, the following named person, to-wit: **DON E. COSBY**, who was duly sworn to testify the truth, the whole truth, and nothing but the truth of knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon examined upon oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness, and signature of the witness is to be before any notary public and returned within 30 days from date of receipt of transcript.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or

FULLER & PARKER 800-443-DEPO(3376) 214-369-DEPO(3376)

51716 9852

financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 24th day of September, 1997.

Ronald R. Cope
RONALD R. COPE, CS# 18183
FULLER AND PARKER, INC.
400 Premier Place
5910 North Central Expressway
Dallas, Texas 75206-3190

Charge for transcript and exhibits \$ _____

To be paid by Plaintiff/Mr. Grant Kaiser

Asg No 14494
Job Ref No 3485

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51716 9853

CORRIGENDUM

[Disregard if signature waived]

Asg No

14494

PAGE

LINE

CHANGE/REASON

Signature of Witness

STATE OF TEXAS

COUNTY OF

SUBSCRIBED AND SWORN TO by the said witness,

_____, on this the _____ day of _____

My commission expires:

Notary Public in and for the State of

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\$

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Lawyer's Notes

51716 9871

*As' initial disclosure***DON E. COSBY**

Mr. Cosby holds a B.B.A. in Accounting from Texas Tech University. He has been a Certified Public Accountant for over 15 years. Mr. Cosby has served as the Chief Financial Officer for private corporations and a public university. He served as the Chief Fiscal Officer for Texas Tech University from 1989 through 1996. In addition, Mr. Cosby has extensive experience administering group health insurance plans and has served on the Texas State Group Insurance Advisory Committee.

Mr. Cosby is expected to provide factual background information about Texas Tech and its health insurance plans during the 1980s through the 1990s. In particular, he will testify about the state appropriations process, the funding of Texas Tech's health insurance plan, and Texas Tech's option to join UGIP.

Mr. Cosby is expected to testify that had Texas Tech not joined UGIP, Texas Tech's health care insurance costs would have been lower. Mr. Cosby is also expected to testify that Texas Tech's actual health care costs were often less than the health care premiums appropriated by the State, and the State undertook no effort to recoup any surplus in premiums.

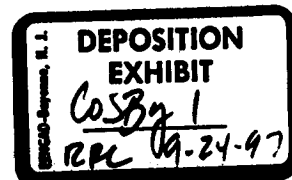
Mr. Cosby is also expected to testify that Texas Tech could have taken steps to mitigate or eliminate what the State contends are additional employee health benefit costs attributable to smoking by charging an additional premium to smokers, or by reducing benefits to smokers.

Mr. Cosby is also expected to testify about the University of Texas and Texas A&M health insurance plans. Mr. Cosby is expected to testify that the State's damages model(s) overestimates health care costs incurred by Texas Tech, the University of Texas and Texas A&M insureds. Mr. Cosby's testimony on this subject may depend upon the final statistical model required to be produced by the State by June 15, 1997.

Mr. Cosby may also be asked to comment on the opinions of other witnesses, as well as the evidence they relied on, to the extent those opinions relate to his areas of expertise.

Mr. Cosby bases his opinions on: his years of experience as an accountant and fiscal officer; his personal knowledge of and familiarity with the Texas Tech health insurance plan, administration and funding; a review of literature and other information commonly relied upon; a review of documents and other information produced by the State, and other information obtained by defendants from state libraries and archives.

51716 9872



FROM

RESUME
DON E. COSBY
4713 96TH Street
Lubbock, Texas 79424

EXPERIENCE

**STATE NATIONAL BANK
OF WEST TEXAS**
Lubbock, Texas 1996-Present
Executive Vice President
Chief Financial Officer
Director of Holding Company
and Bank

Organizer, Officer and Director of newly chartered bank in Lubbock, Texas, responsible for regulatory applications, acquisition analysis, capital planning, employee benefit plans and asset/liability functions.

TEXAS TECH UNIVERSITY
Lubbock, Texas
1989-1996
Vice President for
Fiscal Affairs

Chief Fiscal (Financial) Officer of the University, responsible for institutional accounting, investment management, budget preparation, legislative request preparation, financial analyses and reporting, purchasing and contracting, property management control, personnel administration, including health insurance plans, and affirmative action. Also, served as Treasurer of Texas Tech University Foundation.

FORD BANK GROUP, INC.
Lubbock, Texas
1981-1989
Executive Vices President
Chief Financial Officer
Director of Holding
Company and Subsidiary
Banks

Chief Financial Officer of the Ford Bank Group, with 23 banks in Texas and New Mexico and assets of \$2.2 billion, responsible for acquisition analyses and coordination, regulatory applications and compliance, SEC registration, tax planning and compliance, debt structuring, and medical benefit program coordination.

KPMG PEAT MARWICK
Amarillo, Texas
1977-1981
C.P.A.

Accountant for two years in the audit department and manager for two years in the tax department, responsible for banking, savings and loan, agricultural and retail clients.

EDUCATION

Texas Tech University
B.B.A. in Accounting - 1977 Magna Cum Laude

C.P.A. in Texas - Certified 1979

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Don H. Corby, Resume
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PROFESSIONAL AFFILIATIONS

American Institute of Certified Public Accountants.
Past Member - Texas Guaranteed Student Loan Board
(statewide board)
Past Member and Chair - Group Insurance Advisory
Committee (statewide committee)
Nat. Assoc. of College and Univ. Business Officers
Officer and Board Member - Ronald McDonald House
Officer and Board Member - United Way of Lubbock

COMMUNITY ACTIVITIES

PERSONAL

Date of Birth: September 26, 1954
Marital Status: Married with two children
Health: Excellent
Hobbies: Racquetball and Hunting

FROM

DISCLOSURE STATEMENT

Don E. Cosby
State National Bancshares, Inc.
1617 Broadway
Lubbock, Texas 79401
(806) 749-5667

I. Statement of Opinions

1. Texas Tech's actual health care costs were often less than the premiums appropriated by the State, and the State undertook no effort to recoup any surplus.
2. Higher education institutions could have (and in fact the University of Texas System did) take steps to mitigate or eliminate what the State contends are additional employee health benefit costs attributable to smoking by charging additional premiums to smokers, or by reducing benefits to smokers.
3. Higher education health insurance plans could have adopted stricter underwriting guidelines to limit the coverage provided to smokers, or to limit or exclude coverage for selected health conditions.
4. Given the procedure utilized by the State to estimate premiums, premiums are inherently speculative.
5. The contributions received by ERS, UT and A&M for their respective health insurance plans do not consist solely of State funds.
6. Contributions allocated by the State for State employee health insurance plans cover expenses in addition to health insurance claims costs.
7. In addition to the statements listed above, Mr. Cosby is expected to provide fact testimony consistent with his initial disclosure.
8. Mr. Cosby may also be asked to comment on the opinions of other witnesses, as well as the evidence they relied on, to the extent those opinions relate to his areas of expertise.
9. Mr. Cosby may form additional opinions depending on the testimony of other witnesses and additional documents disclosed by the State.

II. Documents Reviewed in Formulating Opinions

See attached list.

III. Publications

Mr. Cosby has not authored any publications within the last 10 years.

IV. Testifying Experience

Mr. Cosby has not testified as an expert within the last four years.

DON CORBY

Starting Bates No.	Ending Bates No.	Title/Description of Document
28130187668	28130187677	Department of Health and Human Services Departmental Appeals Board, Docket No. A-96-030, Report of Witness Dial's Expected Testimony
28130187678	28130187682	Department of Health and Human Services Departmental Appeals Board, Docket No. A-96-030, Report of Witness Travis' Expected Testimony
28130207061	28130207397	Index of "ERS" Documents
A&MS0026192	A&MS0026352	PCA Health Plans of Texas Utilization Info. 1991, 1992, 1993
A&MS0026353	A&MS0026388	1993-94 HMO Annual Reports
A&MS0026389	A&MS0026428	Texas A&M University System Annual Report, Sept. 1, 1991 - Aug. 31, 1994
A&MS0026429	A&MS0026623	Humana Health Care Plans, Annual Report 1993-1994
A&MS0026624	A&MS0026719	HMO Plan Utilization Data, PCA Health Plans of Texas
A&MS0026817	A&MS0026884	1994-95 HMO Annual Reports
A&MS0026885	A&MS0026912	FirstCare Southwest Health Alliance Utilization and Cost Data for Texas A&M
A&MS0026913	A&MS0026948	Humana Annual Reports for Texas A&M University, Sept. 1995
A&MS0027071	A&MS0027140	Physician Corporation of America 1994 Annual Report
A&MS0027191	A&MS0027203	Texas A&M Univ. Premium Analysis/HMO & Premium Totals, August 22, 1996
A&MS0039466	A&MS0039479	Texas A&M University System 1979-1982 Employee Medical Claims Breakdown
A&MS0052633	A&MS0052633	Texas A&M Univ. System Pooled Medical Experience for Year Ending Aug. 31, 1980
A&MS0062606	A&MS0062612	Mr. Keith Fejzak addressing SEBAC, November 18, 1989
A&MS0062638	A&MS0062632	1989-90 Rates for Design Alternatives, Texas A&M Univ. System, October 26, 1989
A&MS0062639	A&MS0062641	Corresp. A&M memo re: Retiree Health Insurance Premiums to Steve Hassel
A&MS0062659	A&MS0062660	1988-89 Summary of the Financial Condition of Insurance Coverages Offered by Texas A&M
A&MS0062664	A&MS0062666	System Employee Benefits Advisory Committee, January 26, 1990
A&MS0062716	A&MS0062721	Texas A&M University System Premium vs. Claims (2/1/89 - 1/31/90)
A&MS0063490	A&MS0063490	Texas A&M Univ. CNA Actual Experience for the Period: 11-5) 84 to 11-01-92
A&MS0105533	A&MS0105533	Texas A&M University System Indemnity Health/Dental Insurance, Claims Experience Summary, Plan Years 1978-1994

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DON COBBY

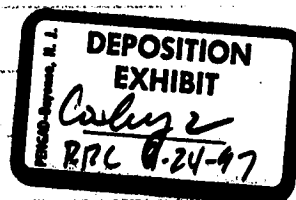
105534	A&MS0105534	Chart of Monthly Totals for Health Maintenance Organizations, Fiscal year 1987-1988
105535	A&MS0105535	Premium Analysis Chart, September 1988 through May 1989
105536	A&MS0105536	Premium Analysis Chart, Fiscal Year 1989-1990
6368	CPA0136401	Policy Options for the Texas Group Health Insurance Programs, August 1990
6479	CPA0136537	Background Information on State Group Insurance and Retirement Programs
6658	CPA0136676	Employee Benefits Issue B7 - Health Insurance, January 1991 - July 1, 1991, Cover Page with Attached Fiscal Year 1990
6984	CPA0137081	A Comparison of the Effectiveness of Cost Containment Measures, Group Indemnity Insurance Costs, and Utilization Trends
7053	ERS0064056	Newspaper Article from Austin American Statesman, entitled, "Higher Premiums Urged for Worker Health Abusers"
7057	ERS0064058	Press release from Office of Governor Mark White
7073	ERS0064074	Press release from Office of Governor Mark White
729	ERS0084751	Uniform Group Insurance Program, Health Plan Statistical Data and Program Orientation, Employees Retirement System of Texas, November, 1989
714	ERS0099474	Annual Report of the Texas Employees Uniform Group Insurance Program for Contract Year January 1, 1992 to January 1, 1993
713	ERS0117843	ERS: Comprehensive Annual Financial Report, Fiscal Year Ended August 31, 1996, Exhibit B-2: Statement of Changes in Healthcare Plan Net Assets with Comparative Totals for the Year Ended August 31, 1995
717	TDI0000223	Report of The Governor's Task Force on State Employee Health Insurance Quality and Cost Containment
73343	TXLEG0003988	Appropriations Bill September 1, 1987 - August 31, 1989
73989	TXLEG0004738	Appropriations Bill September 1, 1989 - August 31, 1991
74739	TXLEG0005439	Appropriations Bill September 1, 1991 - August 31, 1993
75440	TXLEG0006334	Appropriations Bill September 1, 1993 - August 31, 1995
75335	TXLEG0007258	Appropriations Bill September 1, 1995 - August 31, 1997
75335	UTS0006622A	UT: Group Medical Benefits for Employees and Retirees of the University of Texas System, Revised Plan Effective September 1, 1983
75335	UTS0006648	UTS: Group Medical Benefits for Employees and Retirees of the University of Texas System, Revised Plan Effective September 1, 1984

FROM

DON COSBY

UTS0006649	UTS0006677	UTS: Group Medical Benefits for Employees and Retirees of the University of Texas System, Revised Plan Effective September 1, 1986
UTS0006678	UTS0006726	UTS: Group Insurance Plan for Employees and Retirees of the University of Texas System, Effective September 1, 1988
UTS0006727	UTS0006776	UTS: Group Insurance Plan for Employees and Retirees of the University of Texas System, Effective September 1, 1989
UTS0006777	UTS0006825	UTS: Group Insurance Plan for Employees and Retirees of the University of Texas System, Effective September 1, 1990
UTS0006826	UTS0006858	UTS: Group Medical Plan for Employees and Retirees of The University of Texas System, Effective September 1, 1991
UTS0006859	UTS0006908	Summary: Employee Group Benefit Plans, The University of Texas System, Effective September 1, 1992
UTS0006909	UTS0006964	UTS: Employee Group Benefits for Active Employees: UT (University of Texas) Choice Benefits Elections - Plan Year 1993-1994
UTS0006965	UTS0007005	UTS: Group Medical Plan for Employees and Retirees of the University of Texas System Residing Outside of the Point-of-Service Area
28130207398	28130207411	Index of "Texas Tech" Documents
		A Preliminary Estimate of Cigarette Smoking-Attributable Medical Care Costs Incurred by the State of Texas 1969-2007, Vincent P. Miller, January 27, 1997
28130207694	28130207708	Index of "A&M" Documents
28130207548	28130207693	Index of "UT" Documents
28130207783	28130207789	Fulbright & Jaworski Index of "U.T." Documents
28130207412	28130207481	Fulbright & Jaworski Index of "A&MS" Documents
		Don Cosby Disclosure Statement
		Cigarette Smoking-Attributable Medical Care Costs Incurred by the State of Texas 1967-2007, Vincent P. Miller, June 14, 1997
		Addendum to the Miller Model, June 27, 1997
		Estimation of Smoking-Attributable Public Expenditures for the State of Texas, 1968-2007, Wendy Max, Ph.D., July 3, 1997
		Deposition Transcript of Philip Dial
		Deposition Transcript of Stanley Roberts
		Deposition Transcript of James Guelden
		Deposition Transcript of Robert Molloy
		Deposition Transcript of Steve Haase
		Deposition Transcript of Pam Carley
		Deposition Transcript of Ben Sarver

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Are you or are you not,
saying that your extensive
experience in admin.
group health ins. plans
qualifies you to criticize
the damages model that
the states using in this
case



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